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Rethinking the Efficacy of the SEANWFZ Treaty

By Alvin Chew

SYNOPSIS

The Southeast Asia Nuclear Weapons-Free Zone is the only nuclear weapons-free zone treaty with a protocol yet to be ratified by the Nuclear Weapons States. However, will the region be more secure if nuclear weapons are prohibited here? ASEAN needs to rethink the purpose of the Southeast Asia Nuclear Weapons-Free Zone as a regime for nuclear non-proliferation.

COMMENTARY

The Treaty of Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ Treaty, also known as the Bangkok Treaty), which entered into force in 1997, obliges the ASEAN Member States to keep the region free of nuclear weapons and other weapons of mass destruction.

To help realise this goal, the treaty also includes a protocol that is open to signature by the five recognised Nuclear Weapons States (NWS) of the Non-Proliferation Treaty (NPT). Since the inception of the SEANWFZ Treaty, ASEAN has tried to get the NWS to ratify the protocol but to no avail.

Compared with other nuclear weapons-free zone (NWFZ) treaties, the SEANWFZ Treaty is unique in that it has three points of contention: it covers continental shelves and exclusive economic zones (EEZs); it includes the negative security assurance (NSA), which restricts NWS from using nuclear weapons within the zone, and (although this is not unique to SEANWFZ), it does not allow foreign vessels of NWS to visit the ports of the signatories or transit through their territorial waters.

To some extent, the protocol of the SEANWFZ Treaty has been revised to accommodate the concerns of the NWS. Nevertheless, their unwillingness to commit to the protocol highlights the operational challenges that they face in complying with

the treaty. It is perhaps advisable for ASEAN to review the objectives of the SEANWFZ Treaty and whether the region will be more secure with the NWS signing on to the protocol.

Southeast Asia as a Zone of Neutrality

The SEANWFZ Treaty is largely an implementation of Article 7 of the NPT, which stipulates that “Nothing in this Treaty affects the right of any group of states to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories”.

As such, it reinforces the region’s commitment to the non-proliferation principles outlined in the NPT. Given that the region does not operate any civilian nuclear power plants, the absence of nuclear materials means one pathway less to nuclear weapons development.

However, the SEANWFZ Treaty, or any of the NWFZ treaties, is distinct from the NPT in that it not only commits to non-proliferation but also declares the region to be free from nuclear weapons – essentially prohibiting any nuclear intervention by the NWS within the zone.

The source of the SEANWFZ concept can be traced to 1971 when the five original members of ASEAN – Indonesia, Malaysia, the Philippines, Singapore and Thailand – signed the declaration on Southeast Asia as a Zone of Peace, Freedom and Neutrality (ZOPFAN).

Due to the regional and global security climate then, the establishment of SEANWFZ was delayed until the end of the Cold War. The motivation for establishing SEANWFZ was to keep Southeast Asia free from interference by foreign powers, which explains why the ASEAN community wishes the NWS to sign on to the SEANWFZ protocol.

Negative Security Assurance

Initially, the NSA of the SEANWFZ protocol obliges the NWS not to use nuclear weapons within the zone or against any NWS within or outside the zone. This departure from other NWFZ treaties limits the ability of an NWS to defend itself if it is attacked within the zone. For example, if a naval carrier fleet transiting through the zone is attacked with nuclear missiles by another NWS, the carrier group will not be able to retaliate while it is within the zone.

The SEANWFZ Treaty was intended to keep nuclear-armed vessels and nuclear conflict, out of Southeast Asia but this was at odds with the United Nations Convention on the Law of the Sea (UNCLOS) which prescribes the right of passage by vessels in international waters. Hence, the SEANWFZ Treaty protocol has been revised and aligned with other NWFZ treaties, giving assurance that the NWS will not use nuclear weapons against signatories of the treaty.

Given the way the geostrategic situation has evolved, the NSA offered by SEANWFZ is now inadequate to shield ASEAN countries in the event of a nuclear conflict. Tensions on the Korean peninsula, cross-straits relations between China and Taiwan,

and territorial disputes in the South China Sea are flashpoints that could engulf the Asia-Pacific region in a war. Proximity to these flashpoints will mean that ASEAN countries will not be isolated from any operational miscalculations. Given the region's relatively modest military capabilities, ASEAN would benefit from the presence of a superpower to help defend and deter a nuclear attack.

The possibility that an ASEAN Member State may be attacked by an NWS, whether with conventional or nuclear arms, presents a compelling argument for an allied NWS to be engaged in the region. However, signing on to the SEANWFZ protocol will impede the options of nuclear deterrence or second-strike capabilities that an allied NWS can offer.

There could be an exigency for the SEANWFZ protocol to be revoked if an ASEAN Member State is being attacked, but surely, the community need not mull over the legitimacy of allowing a nuclear force to be stationed in the region in times of crisis.

Nuclear Deterrence Remains Essential

Russia has hinted at its readiness to use nuclear weapons should NATO intervene directly in its war with Ukraine. NATO on its part needs to maintain its nuclear capabilities to restrain Russia. There is therefore no hope for nuclear disarmament as nuclear weapons are still needed for deterrence.

The SEANWFZ Treaty should not be seen as a mechanism paving the way for nuclear disarmament. Signing on to its protocol by the NWS will reinforce nuclear non-proliferation, but the disarmament of these states should be dealt with under the disarmament pillar of the NPT. As there are nuclear-armed states, such as India, Pakistan and North Korea, that are not signatories to the NPT, disarmament will remain a vision as the NWS will need to strike a fine balance between credible deterrence and the reduction of its nuclear arsenals.

Moreover, military nuclear capabilities (whether proscribed or non-proscribed) are not restricted to the five NWS. In fact, there is no reason for any NWS to sign on to the protocol, while states such as India, which is not a signatory to the NPT, are not bound by any agreement and can continue to operate their nuclear submarines in NWFZ territorial waters.

Conclusion

The establishment of SEANWFZ has its roots in the ZOPFAN concept, which is about the establishment of a peaceful, stable and neutral Southeast Asia, but whether "neutrality" can be achieved depends much on the region's capabilities to defend itself against an external conflict. If not, it will still need to rely on security assurances of external powers to ensure peace and stability in the region. Furthermore, if ASEAN should decide to press on in getting the five NWS to sign on to the SEANWFZ protocol, there are other nuclear-armed states not bound by the treaty.

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