

# Keeping Nuclear

*Ambassador Jargalsaikhany Enkhsaikhan spoke with the Bulletin's Giovanni Verlini about Mongolia's nuclear-weapon-free zone.*



**Question: What is the origin of Mongolia's nuclear-weapon-free zone (NWFZ) initiative?**

Jargalsaikhany Enkhsaikhan: In the late 1960s, nuclear Soviet Union and nuclear China were very close to an all-out conflict. Mongolia, hosting Soviet military bases, was helplessly caught in the middle.

Mindful of its unique geographical location, one of the first independent foreign policy acts of Mongolia after the demise of the socialist system in early 1990s was to ensure that the threat that it felt during the Sino-Soviet dispute would not be repeated in the future. In September 1992, it declared its territory a nuclear-weapon-free zone (NWFZ) and pledged to have that status internationally guaranteed.

**Q: What makes Mongolia's NWFZ unique?**

JE: Unlike other NWFZs, Mongolia's initiative was a unilateral act of an individual State to turn its territory into a NWFZ. However, knowing full well that a unilateral declaration would not make a credible zone, Mongolia undertook a number of measures aimed at institutionalizing its single-State zone.

First and foremost, Mongolia needed its immediate neighbours' recognition of the zone. This came with the Treaty on Friendly Relations and Cooperation which was signed with the Russian Federation in 1993 and a similar treaty signed with the People's Republic of China, signed in 1994, both sides agreed

not to allow their territories to be used by third States against the state sovereignty and security of the other. Taken together with the Sino-Russian pledge not to use territories of its neighboring third states against each other, these treaties create a favorable political and legal basis for institutionalizing Mongolia's single-State zone at the national and international level. Moreover, in its treaty with Mongolia, Russia pledged to respect its foreign policy of not allowing foreign troops, nuclear weapons, or other weapons of mass destruction to deploy on its territory or transit through it. China made a similar commitment in 1994 in a joint Mongolia-China press statement.

**Q: Did Mongolia seek international recognition and support for its initiative?**

JE: After a number of rounds of bilateral consultations with the five permanent members of the Security Council (the 'P5'), Mongolia decided to pursue full institutionalization of its zone at the United Nations General Assembly by tabling a draft resolution that would welcome and recognize the zone.

Although the P5 in general welcomed the initiative, they were reluctant to agree to the concept and implementation of a single-State NWFZ, believing that that would reduce or undermine the incentive for establishing traditional (i.e., group) NWFZs and set a precedent for others to follow suit. That is why they were not in a position to provide full support for the initiative and agreed to support it not as a full-fledged "zone" but rather as a vaguely defined "status".

In return for Mongolia's non-insistence on the inclusion of explicit reference to the notion of a single-State NWFZ in the UNGA resolution, they expressed agreement to address Mongolia's security concerns in its broader aspect. Within that context in December 1998 UNGA was able to adopt without a vote a resolution entitled "Mongolia's international security and nuclear-weapon-free status".

# Weapons Out

In 2001 the representatives of the P5, Mongolia and the UN met in Sapporo to explore ways of giving the status an international legal basis. They recommended that Mongolia conclude either a trilateral treaty with its immediate neighbors or a six-party treaty with the P5. Mongolia chose to pursue the first path.

## **Q: How is the NWFZ enforced?**

**JE:** The effectiveness of Mongolia's international commitment depends on the force of its execution at the national level. That is why its international pledge needed to be converted into domestic law. Hence in February 2000 Mongolia's State Great Hural, the country's Parliament, adopted a detailed statute defining its nuclear-weapon-free status and criminalizing violations.

When drafting the legislation, Mongolia bore in mind its commitment under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) which already was part of its legislation. Therefore the acts prohibited by the legislation concerned primarily acts committed by individuals, legal persons and foreign States as well as the ancillary crimes of initiating or participating in the prohibited acts.

However, going further, the law also prohibited the stationing or transporting of nuclear weapons through its territory as well as dumping or disposal of nuclear weapons-grade radioactive material or nuclear waste on Mongolian territory.

## **Q: How can Mongolia verify that its nuclear free status is not being infringed?**

**JE:** The legislation envisages two levels of verification: national and international. At the national level, the competent authorities are empowered to gather information, stop, detain and search any suspected aircraft, train, vehicle, individual or groups of people to ascertain that the law has been respected and strictly implemented. Also the law calls for greater public oversight of the implementation of the legislation by non-governmental organizations and even individuals, within the mandate provided by the legislation, and to submit proposals to the relevant state authority.

As to international verification, the law stipulates that it can be carried out either in cooperation with the relevant international organizations or through conclusion of special international agreements. So far there has been no need for such verification.

## **Q: How are violations of the law met?**

**JE:** The law establishes criminal liability for violation of the legislation in accordance with the Criminal Code and stipulates that any facility, equipment or other material or means of transportation used to commit the crime are to be confiscated by the State. An individual or legal person that violates the law is to pay compensation for the damage caused to the interests of Mongolia, to the population, the property and the environment in conformity with the relevant Mongolian legislation or the appropriate international treaty to which Mongolia is a party or principles and norms of international law.

The law also addresses the case of possible involvement by other states in its violation. Thus it stipulates that in case of violation or suspected violation of the law by a foreign state, Mongolia will officially notify that state, request an explanation and peacefully resolve the issue. If deemed necessary, the IAEA and other relevant bodies can be asked for assistance. In the event of a legal dispute, the case can be referred to the relevant international court or to arbitration for resolution.

Together with the law, the State Great Hural of Mongolia also adopted an implementing resolution underlining the national and international importance of the law and empowered the Government to actively cooperate with the IAEA and other relevant international organizations to ensure proper operation of the seismic, infrasound and radionuclide stations designed to monitor possible nuclear weapons tests outside Mongolia and report to the Parliament's relevant standing committee on the implementation of the law.

## **Q: Has the legislation been reviewed since 2000?**

**JE:** In accordance with the Parliament's implementing resolution, the first thorough review of the implementation of the law was undertaken in 2006

# Nuclear Free: A World Map

by Giovanni Verlini

**N**uclear free zones currently cover the territories of the entire Southern hemisphere. Treaties banning the development, manufacture, stockpiling, acquisition or possession of any nuclear explosive device are in force in Africa (Treaty of Pelindaba); Latin America and Caribbean nations (Treaty of Tlatelolco); the South Pacific (Treaty of Rarotonga); Southeast Asia (Treaty of Bangkok); and Antarctica (Antarctic Treaty). In addition, five Central Asian countries, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, are parties to the Treaty of Central Asian Nuclear Weapon-Free Zone (CANWFZ), the first of its kind comprising States of the former Soviet Union, and the first such zone in the Northern Hemisphere.

The Treaties also commit parties to not test, allow, assist, or encourage testing, dump radioactive waste, or station nuclear weapons on the territory of any of the States party to the Treaties. In addition, they commit parties to apply the highest standard of security and physical protection of nuclear material, facilities, and equipment to prevent theft and unauthorized use, as well as prohibit armed attacks against nuclear installations within the zones.

Mongolia, on the other hand, is one of the few countries that by its national legislation committed itself not to allow stationing on or transit through its territory of nuclear weapons or any part of such weapons. New Zealand was the first country to adopt a legislation that prohibits nuclear weapons on its land and territorial waters as well as its officials from engaging in nuclear weapons-related activities, or aiding or abetting them. The Philippine constitution bans nuclear weapons from its territory, including from its archipelagic waters. Austrian legislation prohibits not only nuclear weapons, but also nuclear energy production, and, being surrounded by many nuclear power plants, underlines the importance of strengthening nuclear liability norms and clearer compensation rules. ☼

by an inter-agency working group representing five ministries, four agencies and one NGO. The group came to the conclusion that most of the provisions of the law were being implemented.

On the other hand it also concluded that it was impossible to verify implementation of its provisions (Article 4.1.4 of the law) regarding prohibition of dumping or disposal of nuclear weapons-grade radioactive material or nuclear waste, since Mongolia has a vast, sparsely populated territory and the authorities and specialists lack adequate information and experience in dealing with nuclear weapons-grade radioactive material and wastes.

The prohibition of the transport of nuclear weapons, parts or components, is also difficult to implement due to the lack of detection equipment and specialized staff.

All in all, the working group made specific recommendations and presented its findings to the Government and Parliament of Mongolia for their possible consideration and follow-up. Copies of the report were also circulated as an official document of the UNGA and the IAEA.

## Q: Could such legislation affect negatively peaceful application of nuclear technology?

**JE:** The legislation makes sure that the prohibitions do not affect peaceful uses of nuclear energy or technology. That is why it underlines that nuclear energy and technology could be developed under license, issued by the state administrative authority in charge of nuclear energy, for the purposes of health care, mining, energy production and scientific research.

## Q: What are Mongolia's initiatives in nuclear safety and security?

**JE:** Mongolia is taking steps to ensure that the safety and security of nuclear facilities and installations in Mongolia itself and in its neighboring areas meet global standards. To that end it needs to accede to such international conventions such as the Convention on Nuclear Safety, the Joint Convention on the Safety of Spent Fuel Management and other multilateral conventions in the nuclear field, and at the same time to cooperate with its neighbors bilaterally and within the framework of these conventions.

In July 2009, a Nuclear Energy Law was adopted dealing with formulation of the necessary safety and security principles, establishing an independent regulatory body and a regulatory control system, stricter rules on issuing special licenses, implementing import and export controls of nuclear material, and compensation mechanisms for nuclear damage among other measures. This further strengthens the legal basis for nuclear security and safety nationally.

## Q: What are the future steps in the process of having Mongolia's status finally acknowledged internationally?


**JE:** Following up on the Sapporo recommendations, Mongolia has taken steps to institutionalize the status at the sub-regional level by pursuing a trilateral treaty regarding the country's status.

In 2007 it presented a draft trilateral treaty to its neighbours. The draft is based on the common provisions of other NWFZ treaties and at the same time

reflects the good relations that Mongolia presently enjoys with its neighbours.

The assurances that Mongolia seeks to acquire are somewhat more limited in scope than those the P5 usually provide to other NWFZs. Bearing in mind its location and relations with its neighbors, Mongolia could settle for their pledge to respect its status and refrain from any acts that could impel Mongolia to violate it.

In 2009 we met twice with Russia and China to discuss the content and the format of the treaty. I hope

that the trilateral talks will soon produce a treaty that strengthens Mongolia's security and at the same time contributes to regional stability, greater confidence and non-proliferation. I also hope that the three other nuclear-weapon states (US, UK and France) will be able to pledge to support the treaty and the status in the form of a protocol to the treaty. 

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# Life begins at 40 by Giovanni Verlini

**In 1970, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) entered into force. Forty years on, the world is awaiting the outcome of its May 2010 review conference.**

Over 40 years have passed since the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) officially entered into force on 5 March 1970. Opened for signature in 1968, signed first by the countries that proposed it — Finland and Ireland — to date the NPT has enlisted nearly 190 States as parties.

In essence, the NPT aims to prevent the spread of nuclear weapons and weapons technology, foster the peaceful uses of nuclear energy, and further the goal of nuclear disarmament.

## **The NPT and the IAEA**

The IAEA is not a party to the NPT but is entrusted with key roles and responsibilities under it. The Treaty establishes a safeguards system under the responsibility of the IAEA, which also plays a central role in areas of technology transfer for peaceful purposes.

The role of the IAEA is specifically defined under Articles III and IV of the NPT — which is made up of a preamble and a total of eleven articles.

◆ **NPT Article III:** The IAEA administers international safeguards to verify that non-nuclear weapon States party to the NPT fulfill the non-proliferation commitment they have made, “with a view to preventing diversion of nuclear energy from peaceful

uses to nuclear weapons or other nuclear explosive devices”; and

◆ **NPT Article IV:** The IAEA facilitates and provides a channel for endeavours aimed at “the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world”.

In practical terms, the IAEA is also seen as having roles in connection with verification of nuclear-weapon-free zones and in the context of verifying ex-nuclear weapon material.

## **Review Process**

The NPT is reviewed every five years at Review Conferences of the Parties to the Treaty of Non-Proliferation of Nuclear Weapons. The first such conference was held in Geneva in 1975.

At the 1995 Review Conference in New York it was decided to extend the NPT indefinitely — it had been originally conceived with a duration of 25 years. The next Review Conference will be held in May 2010 in New York.

The Russian Federation, the UK, US are the depositary governments of the NPT. 