
Joining the Southeast Asia Nuclear Weapon-Free Zone Treaty

A Right Decision and a Long Way to Go for Vietnam

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Abstract: This paper suggests that the Vietnamese government should take proactive measures to ensure that the Treaty of Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ Treaty) and its Protocol are fully implemented. Efforts have been made to prepare the path for better implementation, but in the rapidly changing strategic environment, Vietnam and other state parties have faced some obstacles. Recently, the rise of regional complexities and the general political context surrounding the SEANWFZ Treaty, notably by the US–China strategic confrontation, ASEAN countries have urged the five permanent members of the United Nations Security Council—the P5—to sign the Protocol. Upon general examination of the costs and benefits of the SEANWFZ Treaty in Vietnam’s case, some suggestions could be raised for obtaining the signature of said states

Keywords: *SEANWFZ Treaty, Vietnam, nuclear weapons*

Introduction

As the first nuclear security framework launched by all ASEAN countries, the Treaty on the Southeast Asia Nuclear Weapon-Free Zone, or the Bangkok Treaty, was signed by ten member countries in 1995. The concept of a nuclear weapon-free zone (NWFZ) was initially introduced in the 1971 Declaration of Zone of Peace, Freedom and Neutrality (ZOPFAN) by five ASEAN members.^① It was due to security concerns, intra-ASEAN differences, and strong resistance by the United States that the realization of the ASEAN nuclear-free-zone concept was concluded only after the end of Cold War. As a result, the Bangkok Treaty was praised as "One Southeast Asia"^② for overcoming the aforementioned obstacles and conveying a message of peace at both the regional and global scale.

The Treaty entered into force in 1997 and consists of 22 articles, an annex, and a Protocol intended for declared nuclear weapons states (NWS) to respect the Treaty and abstain from violating it and the Protocol.

① Namely Indonesia, Malaysia, the Philippines, Singapore, and Thailand.

② Amitav Acharya and J.D. Kenneth Boutin, "The Southeast Asia Nuclear Weapon-Free Zone Treaty," *Security Dialogue* 29, no.2 (1998): 219-30.

The Treaty promotes nuclear non-proliferation principles, protects Southeast Asia's right to use nuclear energy peacefully, and seeks to establish a secure regional environment.^① It demonstrates a strong commitment to the three core pillars of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT): nuclear disarmament, non-proliferation, and peaceful use of nuclear energy. The pressing objective of the SEANWFZ Treaty lies in the provisions of Articles 2 and 3, which regulate the territorial scope and stipulate obligations. Accordingly, States Parties agree not to “develop, manufacture or otherwise acquire, possess or have control over nuclear weapons; station or transport nuclear weapons by any means; test or use nuclear weapons.”^② They are also obligated not to allow other states to do so within their respective territories.

The Protocol is open for signature by the P5: China, France, Russia, the United Kingdom, and the United States. 2012 was the most promising year in terms of the P-5's readiness to sign the Protocol. However, the signing was postponed at the last minute when four NWS (France, Russia, the United Kingdom, and the United States) had introduced the text on reservation and position reservation to the SEANWFZ Commission. While China shows supportive moves for the signing,^③ the other four NWS continue to question the merits of including the Economic Exclusive Zone (EEZ) and continental shelf in the zone.^④ The negative security assurance principle is also a concern that makes them circumspect in pursuing commitment. Nonetheless, their opposition to the SEANWFZ Treaty appears to be more technical-legal in nature than political-strategic.^⑤ To that extent, there is optimism that the disparities between SEANWFZ nations and the NWS may be minimized and adjusted to the point where nuclear weapons could be completely absent from Southeast Asia and even the Southern Hemisphere.^⑥

① Acharya and Boutin, “The Southeast Asia Nuclear Weapon-Free Zone Treaty,” 219–30.

② “The Treaty on the Southeast Asia Nuclear Weapon-Free Zone,” opened for signature on December 15, 1995, Article 2 and Article 3.

③ China was scheduled to sign a Memorandum of Understanding with ASEAN on the Protocol and Treaty to the SEANWFZ on 10 July 2012, but ASEAN decided to delay any NWS signings until the issue was resolved. The willingness to sign also demonstrated in the latest National Report on the People's Republic of China's Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons in 2021. The report says at the meeting of the five nuclear-weapon nations held in Beijing on January 30, 2019, all parties agreed that China should take the lead in communicating with ASEAN countries, resuming talks on the issue of the protocol, and attempting to sign the agreement as soon as possible. See Ministry of Foreign Affairs of the People's Republic of China, “关于中华人民共和国履行《不扩散核武器条约》情况的国家报告,” December 28, 2021, https://www.fmprc.gov.cn/web/wjtb_673085/zjzg_673183/jks_674633/fywj_674643/202112/t20211228_10476386.shtml (accessed July 23, 2022).

④ Nuclear weapon states connect this issue to the ongoing arguments over interpretations of several fundamental provisions of the United Nations Convention on the Law of the Sea, such as innocent passage, freedom of navigation, transit of ships, and other maritime behavior.

⑤ Bilveer Singh, *ASEAN, The Southeast Asia Nuclear Weapon-Free Zone and The Challenge of Denuclearisation in Southeast Asia: Problems and Prospects* (Canberra: Strategic and Defence Studies Centre, Research School of Pacific and Asian Studies, Australian National University, 2000), 48.

⑥ Currently, excluding the South Asian region, the Southern Hemisphere is nearly entirely covered by four nuclear-free zone treaties: the 1967 Treaty of Tlatelolco – Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, the 1985 Treaty of Rarotonga – South Pacific Nuclear Free Zone Treaty, the 1996 Treaty of Pelindaba – African Nuclear-Weapon-Free Zone Treaty, and the 1995 Treaty of Bangkok – Treaty on the Southeast Asia Nuclear Weapon-Free Zone.

Benefits of the SEANWFZ Treaty for Vietnam

An enormous achievement for regional security

First and foremost, the Treaty contributes to a more stable regional environment for the growth of member nations, including Vietnam. In the spirit of ZOPFAN, the SEANWFZ Treaty maintains the regional effort to consolidate and strengthen ASEAN's solidarity, cohesion, and harmony by strengthening national and regional resilience through enhanced cooperation and mutual assistance to further promoting Southeast Asia as a Zone of Peace, Freedom and Neutrality.^① For ASEAN, remaining neutral does not exclude any national interests; the goals of ZOPFAN and SEANWFZ do not include the termination of security cooperation^② with non-regional states.^③

The nuclear issue is not an academic matter for Southeast Asia, but a practical one. Vietnam does not have the intent to develop nuclear weapons and there was no evidence that Vietnam has the ambition to do so. However, Myanmar, currently engulfed in chaos, has been accused of pursuing a nuclear program for several years. The nuclear intentions of Burma's secretive military dictatorship have also raised suspicion. Technically, by signing the NPT, all ASEAN member-states have abandoned their nuclear weapons programs, but some have pursued underground development of nuclear weapons programs. Therefore, the establishment of a nuclear weapon-free zone (NWFZ) is essential for shutting down such rekindled programs.

Additionally, ASEAN regards the SEANWFZ Treaty as a vehicle for promoting nuclear non-proliferation within the broader Asia-Pacific region. Specifically, North Korea continues to be a flashpoint in this regard.^④ Similarly, the buildup of nuclear capability in South Asian nations, namely India and Pakistan, also raise concerns for ASEAN: in a worst-case scenario, such ambitions could influence countries in Southeast Asia to rethink their non-nuclear-weapon programs. In this regard, the SEANWFZ is a key regional confidence-building initiative among Southeast Asian countries as well as between them and neighboring states.

Vietnam's national security at the core

① Sharon Siddique and Sree Kumar, *The 2nd ASEAN Reader* (Singapore: ISEAS Publishing, 2003), 534.

② In actuality, the Philippines and Thailand have maintained their alliances with the United States, and Malaysia and Singapore have maintained their participation in the Five Power Defense Arrangement, which also includes the United Kingdom, Australia, and New Zealand.

③ M. C. Abad, "A Nuclear Weapon-Free Southeast Asia and its Continuing Strategic Significance," *Contemporary Southeast Asia* 27, no.2 (2005): 179

④ Even though ASEAN desires a comfortable relationship with North Korea economically and socio-culturally, it has been adamant in preserving its stance on nuclear weapons, whereas North Korea is now widely recognized as a *de facto* nuclear state. At the 51st ASEAN Foreign Ministers' Meeting, ASEAN reaffirmed its demand for North Korea's denuclearization in a Joint Communique.

Vietnam's decision to completely forgo nuclear weapons and weapons of mass destruction is unquestionably a wise one. Not every country can afford the nuclear route, either economically or politically.^① Vietnam does not own nuclear weapons, but in order to assure national security, could be drawn into a conventional arms race. This is where the SEANWFZ Treaty might assist Vietnam in ensuring security without having to enter into an arms race.^② With a consensus on the disarmament of nuclear weapons and weapons of mass destruction, Vietnam and other regional governments may feel safer and more secure.^③

Subsequently, by achieving denuclearization, Vietnam could avoid the smuggling of nuclear technology and the illegal acquisition of fissile materials. The dispersal of nuclear technology to other states and non-state actors is a serious concern for almost all nations, both the haves and the have nots. If nuclear technology and energy were to fall into the hands of terrorists, the impact on national security would be immeasurable.^④

Nothing in the SEANWFZ Treaty hindered the right of the States Parties to use nuclear energy for peaceful purpose, especially for socioeconomic development. Vietnam can benefit from the mechanism that supports the development of nuclear energy and considerably reduce the risk of nuclear accidents by complying with inspections by the International Atomic Energy Agency (IAEA) and Network of Regulatory Bodies on Atomic Energy (ASEANTOM). Initially, the Treaty subjects a member state to potential inspections and requires it to conclude a comprehensive safeguard agreement with the IAEA after entering into the SEANWFZ.^⑤ In 2013, ASEAN established ASEANTOM, as an institutional mechanism for assisting member states to further implement and adhere to IAEA standards and guidelines at the regional level, especially regarding cross-border transfer of nuclear and radioactive materials and related activities. These mechanisms helped Vietnam exchange and adopt optimal practices and experiences in regulating nuclear and radioactive materials; promote capacity building by focusing on human resource development through training courses and technical collaboration, and guide emergency responses to potential nuclear or radioactive incidents.

① Marie Isabelle Chevrier, *Arms control policy: A guide to the issues* (Santa Barbara, Calif: Praeger, 2012), 49. Schelling and Halperin's research clarifies that the goal of arms control in general is "reducing the likelihood of war, its scope and violence if it occurs; and the political and economic costs of being prepared for it."

② Some researchers suppose the possibility of a nuclear arms race is back while some already suggest solution to stem it. If a member state became a nuclear power, the other states would be motivated to develop nuclear weapons, thereby causing a nuclear arms race in Southeast Asia. For instance, many researchers claim that an arms race is already underway in Asia: Asian countries were racing to buy submarines before AUKUS (trilateral security pact between Australia, the United Kingdom, and the United States) was formed. As the ace asymmetrical weapon, submarines allow smaller navies to stand up to the most powerful. This reason and national security concerns may drive a Southeast Asian country to enter the race.

③ A supportive argument for this view is that countries that are sure their regional adversaries do not possess nuclear weapons may be less eager to develop such weapons themselves.

④ Terrorism isn't a new issue in Southeast Asia. While Western countries try to counter the influence of the Islamic State, counterterrorism is also a major concern for countries such as Indonesia and Malaysia.

⑤ "The Treaty on the Southeast Asia Nuclear Weapon-Free Zone," opened for signature on December 15, 1995, Article 5.

Last but not least, the SEANWFZ Treaty contributes to confidence-building processes between Vietnam and other countries in resolving regional disputes. The creation of a regional verification system to assure compliance with the SEANWFZ Treaty would not only improve nuclear transparency but also set a precedent for other defense and security-related measures and cooperation.^① Thanks to the Treaty, Vietnam and other nations in the region, including the P5, are required to engage in more discussions and exchange a greater deal of information, thereby fostering confidence and expeditiously resolving security difficulties. The fact that ten countries have agreed to include regulations on EEZ indicates that they have a "common voice" both implicitly and explicitly and that they respect the provisions of The United Nations Convention on the Law of the Sea (UNCLOS)—a convention that plays a crucial role in Vietnamese political discourse. Considering the fact that China is the most supportive country among the P5 that demonstrates apparent effort with ASEAN countries to overcome "remaining concerns" with the Protocol, Vietnam should consider this point as the springboard for more in-depth progress in the confidence-building process in South China Sea disputes.^②

Costs of the SEANWFZ Treaty for Vietnam

The SEANWFZ Treaty mandates that members establish an interactive relationship with regional states, and therefore could make national security dependent to some degree on the cooperation of prospective adversaries.^③ In the implementation process outlined in Articles 13 and 14, Vietnam could potentially expose sensitive national security information to undesirable agencies.

In a broader sense, NWFZs have been previously regarded as a weak nuclear disarmament approach since they shift the duty of verification from NWS to NNWS.^④ The nuclear disarmament process of declared NWS is usually sophisticated, ineffective and in fact, NWS lacks the political will to disarm. However, like the NPT, the SEANWFZ Treaty contains three important pillars: disarmament, non-proliferation, and peaceful use of nuclear energy. These are equally important missions, and non-proliferation plays the role of the top track towards the complete elimination of nuclear weapons. From this point of view, those missions reconcile with each other and turn a cost into a benefit.

① Singh, *ASEAN, The Southeast Asia Nuclear Weapon-Free Zone and The Challenge of Denuclearisation in Southeast Asia: Problems and Prospects*, 37.

② In the 2021 National Report on the People's Republic of China's Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, China's Government pointed out that China and ASEAN have made joint effort to resolve the remaining issues of the Protocol. See Ministry of Foreign Affairs of the People's Republic of China, "关于中华人民共和国履行《不扩散核武器条约》情况的国家报告," https://www.fmprc.gov.cn/web/wjw_673085/zzjg_673183/jks_674633/fywj_674643/202112/t20211228_10476386.shtml (accessed July 23, 2022).

③ Jeffrey A. Larsen and James J. Wirtz, eds., *Arms Control and Cooperative Security* (Lynne Rienner Publishers, 2009), 5.

④ Abad, "A Nuclear Weapon-Free Southeast Asia and its Continuing Strategic Significance," 175.

Including the EEZ and continental shelf could be a double-edged sword. The zone's precise geographical boundaries are ambiguous, which may have serious implications for national sovereignty.^① There are four ASEAN nations that have unresolved maritime territorial disputes with mainland China and Taiwan: the Philippines, Vietnam, Malaysia, and Brunei.^② This may provide challenges to dispute settlement in terms of conformity with the conditions of the Treaty and the Protocol.

Costs and Benefits of the Protocol

Once the P5 sign the Protocol, Vietnam will receive some benefits. Most significantly, Vietnam will be guaranteed by the negative security assurance from NWS. The Protocol would also obligate the P5 not to use or threaten to use nuclear weapons against any State Party to the Treaty. However, the potential implementation of this principle raises the question of whether Vietnam would face any undesirable circumstances.

The answer is yes. All NWS would issue negative assurances to State Parties and to de facto nuclear-armed states outside the NPT framework. Additionally, Article 2 of the Protocol stipulates that each State Party agrees "not to use or threaten to use nuclear weapons within the Southeast Asia Nuclear Weapon-Free Zone."^③ Therefore, if a non-ASEAN nuclear-armed country, such as India or North Korea, deploys nuclear weapons within the zone, the P5 will not be allowed to use or threaten to use nuclear weapons against them. The United States undoubtedly has no intention of offering a negative security assurance to a country like North Korea, and it can be assumed that the Biden administration will not make such a commitment in the foreseeable future. While a scenario in which North Korea deploys nuclear weapons to Vietnamese territory is highly improbable, it is worth considering the disadvantages of the negative security assurance principle for both Vietnam and the P5.

Recommendations

Overall, the SEANWFZ Treaty is of immense value to Vietnam and Southeast Asia, where all states pledge to take concrete action to obtain general and complete nuclear weapons disarmament and promote international peace and security. Compared to the accords of the nuclear weapons-free zone, this Treaty has a number of innovative and unprecedented provisions: (i) the zone of application includes the continental shelves and exclusive economic zones of the contracting parties, and (ii) the negative security assurance

① Zhao Tong, "Nuclear Weapon States And The Southeast Asia Nuclear Weapon Free Zone," *Carnegie Endowment For International Peace*, February 10, 2017, <https://carnegieendowment.org/2017/02/10/nuclear-weapon-states-and-southeast-asia-nuclear-weapon-free-zone-pub-67965> (accessed May 7, 2022).

② Indonesia does not claim sovereignty over any geographical features in the South China Sea, but its claimed EEZ overlaps with the claims of several of the above-mentioned nations.

③ "The Treaty on the Southeast Asia Nuclear Weapon-Free Zone," opened for signature on December 15, 1995, Article 2.

which a commitment by NWS not to use nuclear weapons against any participating state or Protocol Party within the zone of application.

In addition to including the EEZ in the scope of the Treaty, the Protocol has novel methods and a high degree of flexibility. For instance, in the event of a breach of the Protocol, the Executive Committee may convene a special meeting of the Commission to decide on appropriate measures to be taken. No previous denuclearization treaty contains such a provision. The rules pertaining to zonal procedures are stricter even than those in the NPT, so as to ensure nonproliferation obligations are being followed.^①

All of the aforementioned factors explain Vietnam's consistent support of the Treaty. Regardless of the geopolitical environment, Vietnam understands that national security is best ensured by becoming party to the Treaty. There are, however, obstacles that members must overcome, such as bringing the P5 on board. Vietnam should join hands with its ASEAN neighbors in calling on the P5 to sign the Protocol. Undoubtedly, the ongoing delimitation process in the South China Sea is the elephant in the room; any efforts to promote ASEAN regional security should be connected with this major concern. It is feasible that the Treaty's parties will change the Protocol's text to make it acceptable to NWS, and to reduce the P5's concerns over interpretations of several fundamental provisions of the UNCLOS. These include the principles of innocent passage, freedom of navigation, transit of ships, and other maritime behavior. Tong Zhao (2017) elaborates on many of the NWS' concerns related to international transport. For example, the Treaty's definition of "innocent passage" may pose a problem for the NWS' free movement of nuclear-armed vessels. To reduce this concern, ASEAN Senior Officials should clarify or notice the NWS that nothing in the Treaty or Protocol would impact existing rights and territory boundaries under the provisions of UNCLOS.

Given the rise of regional complexities and the general political context surrounding the SEANWFZ Treaty, ASEAN (Vietnam in particular) should adopt a new dispute resolution mechanism to be included in the Treaty, rather than the simplistic approach of "disputes between signatories should be resolved through "peaceful means."

In brief, achieving the signing of P-5 will not be done overnight. In this challenging journey, Vietnam must put more effort into assisting ASEAN in obtaining the consensus of nuclear weapon states.

① Jozef Goldblat, "Nuclear-weapon-free zones: A history and assessment," *Nonproliferation Review* 4, no.3 (1997): 28.

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