Informal Workshop on Good Practices and Lessons Learned with Respect to the Existing Nuclear-Weapon-Free-Zones (7-9 July 2020)

Theme 3: “How the Bangkok Treaty addresses issues of transit passage and regulation of exclusive economic zones”

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1. Introduction.

- It is a pleasure and an honour to be with you all at this workshop. My Director-General of the ASEAN Affairs Department at the Ministry of Foreign Affairs of Thailand sends her sincere appreciation to High Representative Izumi Nakamitsu for the kind invitation to speak at this event and apologizes for not being able to participate herself.

- In her stead, I hope to be able to share the experience of the SEANWFZ and the Bangkok Treaty to the best of my ability for the purposes of this discussion. The distinguished panelists thus far have been very illuminating and I am honoured to join in the conversation.

- I have been asked to speak about how the Bangkok Treaty addresses issues of transit passage and regulation of exclusive economic zones. But before I get into those details, I would like to begin with a question to provide a little bit of context.

- How do you measure the success of a Nuclear Weapon Free Zone? Is it by the ratification of all NWS? Is it by the absence of nuclear war or the absence of an active threat of nuclear war in your region? Or is it the absence of conflict?

- In ASEAN’s experience, we would average about an 8 out of 10 if I answered yes to that entire list of questions. But I am confident that if you ask any ASEAN country, regardless of our diverse views and evolving positions on a number of specific issues, the success that we have achieved from the establishment of the zone, is the fact that we have created, developed and nurtured, a common regional security identity (and one that goes beyond the Cold War context).

- What I mean is that beyond advancing global non-proliferation and disarmament objectives, SEANWFZ has succeeded in advancing a common future, from an existential security standpoint. For ASEAN, it has meant overcoming our
differences and what Dr. Renata said yesterday, “putting yourself in someone else’s shoes”.

- This is the first important point that I would like to make because I believe it has relevance for the current state of global affairs and the need to find opportunities for this valuable exercise whenever possible.
- As we heard yesterday, the Cold War and the end of the Cold War were the catalyst for the establishment of a number of zones. Today, in our current state of affairs, which many say has been possibly the worst in disarmament history in recent years, there is opportunity even in crisis. The growing importance of regionalism in today’s COVID context cannot be overstated. Set within major power rivalry, trade tensions and challenges to multilateralism, it can be an opportunity to forge common regional peace and security.

2. Transit and EEZs.
- When we turn to the issue of how the Bangkok Treaty dealt with transit passage and regulation of exclusive economic zones, the “question” I raised earlier will come into play.
- The inclusion of EEZs and the continental shelves is a distinct feature of our Treaty. In our region’s experience and throughout our history of inter-state relations, geographical characteristics have been and are a significant factor. As it relates to SEANWFZ, our ten-country organisation comprises the first and the second largest archipelago in the world, namely, Indonesia and the Philippines. Indonesia boasts a total of approximately 15,000 islands while the Philippines comprises a rough number of 7,000 islands. Hence, because of the importance placed on the sea, it was decided that the scope of the SEANWFZ would not only cover territorial waters, but also the EEZs and the continental shelves. The Middle East may find relevant characteristics in the region that could be reflected in the Treaty and its Protocol.
- Regarding transit passage, our Treaty is not dissimilar to the Tatelolco or the Raratonga treaties. Articles 1, 2 (2) and 7 address the issue.
- Article 7 states that “Each State Party, on being notified, may decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships through its territorial sea or archipelagic waters and overflight of foreign aircraft above those waters in a manner not governed by the rights of innocent passage, archipelagic sea lanes passage or transit passage.” Article 1 defines the word “station” and Article 2 (2) invokes UNCLOS and the UN Charter.
- These articles are interpreted and put into practice through another distinct feature of the Bangkok Treaty, which is the “peer review”. Namely, any
actions that contravene the Treaty could eventually be brought, through the relevant mechanisms, to the IAEA, the GA, or the UNSC but before doing so, States Parties are entitled to seek early clarification from other State Parties on relevant verification of compliance, including information on port visit, transit, or passage of foreign ships and aircraft.

- So, to take both issues comprehensively, the Bangkok Treaty was very clear on the discretion given to States Parties on the issue of transit, with direct references to UNCLOS and the UN Charter. At the same time, it was ambitious in including the EEZs.

- These two issues combined have been the major stumbling block in consultations with the NWS on signing and ratifying the Protocol to the Treaty. Essentially, NWS have not signed the Protocol to the Bangkok Treaty because they object to the inclusion of continental shelves and EEZs; to the restriction not to use nuclear weapons within the large zone of application, or from within the zone against targets outside the zone; and to the restriction on the passage of nuclear-powered ships through the zone. Over the years, their hesitations and concerns have escalated, waned, proliferated, and even streamlined for one NWS, but they have generally remained the same. Some may point to the fact that other zones carry very similar provisions on transit, but have succeeded in obtaining ratifications from a number of NWS. In addition to what the Permanent Representative of Malaysia mentioned yesterday about the need to sort out among ASEAN the issue of reservations (which form part of the delay in moving forward), what many have concluded is that much of the difficulty coming from the NWS lies in the very strategic position of ASEAN. Others also point to a lack of political will.

- Again, the consultations with the NWS have been quite extensive and the SEANWFZ Commission (the Treaty’s compliance mechanism) had last year agreed to the suggestion to invite a representative from the Raratonga Treaty, to share their experience with how they handled reservations from NWS. We do hope to learn from our neighbours in the South Pacific soon and to advance on our positions and consultations vis-a-vis NWS.

- One of the most important lesson to take away from this exercise, is the value of consultations that need to take place among ASEAN Member States themselves, and in a regular fashion. As I said before, one overriding success of the Bangkok Treaty is that it forged a common security identity, but this identity needs to be further nurtured and protected through the ongoing geopolitical shifts and major power rivalries that we find ourselves in now and likely will continue to find ourselves in, in the future.
3. **Parting Thoughts/Lessons for the Middle East.**
   a. No zone is completely alike nor should they be. The distinction in origin, structure, mechanism and other features will be valuable because it will be catered to a security pact that is sustainable for that region.
   b. A balance must be struck and agreed on between clarity versus flexibility. Being aspirational versus being practical. And all of this is for States of the region to define for themselves.
   c. Forging a common security identity can help to diminish reliance on those outside of the region for security. The “how” will require a lot of effort and political will, and to advance discussions on the issue in all related forums, security and even non-security related ones. Nuclear disarmament does not and cannot happen in a vacuum.

- Disarmament and establishing nuclear weapon free zones do not happen overnight and require a lot of persistence and alignment and realignment of security approaches and goals.
- Let me conclude here by reiterating Thailand’s continued commitment to this issue, and our commitment to working with all stakeholders, States Parties, NWS, civil society and industry, towards the disarmament goals embodied in the zones treaties, the NPT, the TPNW and other important international instruments.
- I look forward to hearing from others today and to responding, as much as I can, to any questions or comments you may have.
- Thank you for your attention.