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**MONGOLIA'S NUCLEAR-WEAPON-FREE STATUS:  
RECOGNITION VS. INSTITUTIONALIZATION**

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In September 1992, in an address to the United Nations, the president of Mongolia declared his country's territory a nuclear-weapon-free zone. The declaration was about politics, geopolitics and policy. The political context at the time was quite dramatic: the announcement came on the heels of the completion of the Soviet/Russian troop withdrawal from Mongolia, the collapse of the Soviet Union and the demise of communism in both Russia and Mongolia. The decades of Mongolian dependence on the Soviet Union and hostility toward China were about to become history, as the country set out to normalize its relations with China and revamp those with its new old northern neighbor.

In geopolitical terms, it spoke to the country's unique location. Few countries in the world—in fact, no other country in the world—share Mongolia's unique geographical and geopolitical location: the country is located on the peripheries of Russia and China, its only neighbors, who also happen to be two of the world's five acknowledged nuclear powers.

The declaration at the UN was one of the first independent moves made by Mongolia in formulating its own foreign policy goals. The concept of a nuclear-weapon-free zone, whereby states in a designated territorial area choose, as a group, to promote their security by prohibiting the stationing, manufacturing, testing, and ownership of nuclear weapons on their territories (rather than seeking security by joining alliances or enjoying extended deterrence), had a great deal of appeal to Mongolia. Six such zones, with varying specifics, are currently in existence, all created via treaty arrangements among state parties: in Latin America and the Caribbean, the South Pacific, Southeast Asia, Central Asia, and Africa. The Antarctic could also qualify. Protocols to those treaties designed for the signing and ratification by nuclear-weapon states include provisions committing them not to use or threaten to use nuclear weapons against the states belonging to nuclear-weapon-free zones.<sup>1</sup> Mongolia's ambition was to become a similar internationally recognized nuclear-weapon-free zone enjoying the same security assurances from the nuclear-weapon states.

As a policy, the Mongolian initiative reflected the country's resolve to never let its territory be used as a stationing ground for nuclear weapons: during the Sino-Soviet split the Soviets had reportedly kept nuclear-capable missiles in Mongolia.<sup>2</sup> Ensuring its security by avoiding taking sides in a major power rivalry, let alone a confrontation involving nuclear weapons, was a powerful lesson that the country had drawn from its Cold War experience. Therefore, Mongolia welcomed the normalization of relations between Russia and China in the late 1980s and endeavored to pursue greater balance and good-neighborliness in its own relations with these two countries.

After the disintegration of its former patron, the Soviet Union, Mongolia renounced entering into alliances, except when faced with an external military threat, and adopted a "multi-pillared" approach in its foreign and security policies. This approach emphasized promoting security through friendly relations with Mongolia's neighbors, expanded bilateral ties with other countries, referred to as its "third neighbors"—notably the United States and, regionally,

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<sup>1</sup> The term "nuclear-weapon states" refers to the five states which are declared in the Treaty on the Non-Proliferation of Nuclear Weapons, or NPT, to possess nuclear weapons. They are China, France, Russia, the United Kingdom, and the United States.

<sup>2</sup> J. Enkhsaikhan, "Mongolia's Nuclear-Weapon-Free Status: Concept and Practice," *Asian Survey* 40:2 (2000): 344.

Japan—and a more active multilateral, regional and international engagement. In 1991 Mongolia also joined the non-aligned movement. The use of a United Nations podium for the announcement of its nuclear-weapon-free zone initiative was indicative of this shift in Mongolia’s foreign policy, which sought to more effectively use international organizations and multilateral institutions, primarily the United Nations, to advance its perspective as a small and developing country uniquely located between two major nuclear weapon states.

The nuclear-weapon-free zone initiative also reflected Mongolia’s budding regional perspective for its foreign policy. The statements by Mongolia demonstrated that one of the aims of its initiative was to contribute to security, disarmament and confidence-building both in the region and world-wide. The successful later initiative to establish a nuclear-weapon-free zone in Central Asia was in no small measure inspired by the Mongolian initiative, which saw a nuclear-weapon-free Mongolia as contributing to peace and stability beyond its own borders.

Mongolia’s perception of its security environment vastly improved as a result of these developments. A more optimistic outlook set in, one which led to a more activist approach to foreign policy.

But simply declaring itself a nuclear-weapon-free zone was easy. Besides announcing that Mongolia was to be a nuclear-weapon-free zone, the 1992 statement also said that the country would be working “towards having this status internationally guaranteed.”<sup>3</sup> Beyond serving as a statement of intent, this phrasing suggested an early acknowledgment that Mongolia’s unilateral declaration of its territory as a nuclear-weapon-free zone did not guarantee, in and of itself, an international acceptance of Mongolia as such a zone. The general practice at that time, as it is now, was that such zones were formed by regional groupings of states rather than an individual state. Nonetheless, Mongolia set out to press its case.

In the years that followed it has pushed hard, albeit with varying degrees of intensity, to fulfill the originally stated goal of achieving an “international guarantee” for Mongolia as a nuclear-weapon-free zone. Mongolia’s ambition was “to be placed on a par with the other already declared nuclear-weapon-free zones.”<sup>4</sup> The effort was undertaken at various settings in the United Nations, primarily through statements at the UN General Assembly (UNGA) and its Disarmament and International Security Committee, known as the First Committee (UNFC). The effort has also involved, at various stages, consultations with the nuclear-weapon states.

Along the way, however, the word “guarantee,” used in Mongolia’s initial announcement, was dropped in favor of the term “institutionalization,” and the earlier aim of establishing Mongolia as a nuclear-weapon-free zone was downsized to reflect both the existing practice of such zones being established by a regional group of states, as well as the caution expressed by some nuclear-weapon states regarding deviations from this practice. By 1998, the word “zone” in the original initiative was replaced with the word “status,” and Mongolia agreed to refer to a concept of “Mongolia’s nuclear-weapon-free status” instead of pressing for a full-fledged nuclear-weapon-free zone. This arrangement was formalized in a 1998 resolution of the

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<sup>3</sup> UN General Assembly, 47<sup>th</sup> Session. *Provisional Verbatim Record of the 13<sup>th</sup> Meeting*. September 25, 1992 (A/47/PV.13). Official Record. October 16, 1992, p.11.

<sup>4</sup> Enkhsaikhan, “Concept and Practice,” 351.

United Nations General Assembly entitled “Mongolia’s International Security and Nuclear-Weapon-Free Status.”<sup>5</sup> The resolution not only welcomed Mongolia’s declaration of its nuclear-weapon-free status but also, at Mongolia’s insistence, addressed the country’s broader security concerns.

The 1998 UNGA resolution, discussed in more detail below, was a significant step, conferring legitimacy on Mongolia as a nuclear-weapon-free state and providing a basis for a broad international recognition of Mongolia’s new status. The country, however, continued to seek a more formal arrangement, i.e. the “institutionalization” of its nuclear-weapon-free status.

As 2012 marks the twentieth anniversary of Mongolia’s declaration of its territory a nuclear-weapon-free zone, it is fitting to try to assess the past efforts by Mongolia to “institutionalize” its nuclear-weapon-free status and its achievements in gaining international recognition for this status. This paper surveys, first, the concrete actions taken by Mongolia with a view toward achieving a legal “institutionalization” of its status and concludes that these efforts have largely been inconclusive. Next, the paper surveys bilateral, multilateral and international statements and documents issued in connection with Mongolia’s nuclear-weapon-free status, and argues that Mongolia has in fact been able to gain international recognition for its nuclear-weapon-free status that is closely associated with the objectives pursued by nuclear-weapon-free zones, and that this status is an inseparable part of Mongolia’s national security posture. It concludes by offering a few thoughts on the way forward. The purpose of the paper is to provide a background that could help encourage a more informed and inclusive debate in Mongolia on the matter of its nuclear-weapon-free status.

## **INSTITUTIONALIZATION**

Over the years, representatives of Mongolia have used a variety of terms to denote the goal of formalizing the 1992 declaration of the country’s territory as a nuclear-weapon-free zone or, as it became later known, the country’s nuclear-weapon-free status. These have ranged from “materializing,” “defining and regulating,” “formalizing at the international level,” and “upgrading to the international level” to “promoting and consolidating,” “enhancing its credibility and effectiveness,” setting up a “policy to institutionalize,” and “identifying and defining.” This vocabulary tells a story of proactive approaches to describe and explain the case, but also of reactive adjustments that reflected outcomes of consultative processes with other interested parties, mainly the nuclear-weapon states. For the most part, however, these were interchangeable words that were meant to suggest the achievement of a formal status for a Mongolian nuclear-weapon-free zone and/or status, codified in a legal instrument or arrangement. Since 1997 this effort has been referred to as “institutionalization.” A quick look at these efforts reveals the following.

Mongolia started off its campaign in quite a forceful way. The president’s statement in 1992 that Mongolia “shall work towards having this status internationally guaranteed” was followed, three weeks later, by an elaboration that Mongolia “intend[ed] to seek credible security

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<sup>5</sup> UN General Assembly, Resolution 53/77D, “Mongolia’s International Security and Nuclear-Weapon-Free Status,” December 4, 1998, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/760/45/PDF/N9976045.pdf?OpenElement>.

assurances from the States possessing nuclear weapons to respect the status of Mongolia as a nuclear-weapon-free zone.”<sup>6</sup> The early reference to “security assurances” was a notable one since, when referred to as “negative security assurances,” it commonly describes a commitment by the nuclear-weapon states not to use or threaten to use nuclear weapons against the non-nuclear-weapon states, a commitment that the nuclear-weapon states, with the exclusion of China, have been reluctant to fully embrace. The question of the exact nature of assurances, and of how Mongolia proposed to achieve these assurances, was left unaddressed.

A year later, this initial forcefulness gave way to a hesitancy that was to last until 1996. At the 1993 UNGA, only general support for “the early conclusion of a legally binding agreement on nuclear security assurances for non-nuclear-weapon States”<sup>7</sup> was expressed, with no specific link to the case of Mongolia. The same was true for the following two years. A statement made in 1993 appeared to explain the Mongolian initiative in terms of support for a nuclear test-ban treaty only. Noting the “exceptional importance” of the test-ban treaty for Mongolia, the foreign minister explained, “That is precisely why my country last year declared its territory a nuclear-weapon-free zone.”<sup>8</sup> This statement significantly trimmed down the objectives of the nuclear-weapon-free zones, which, beyond the testing, generally prohibit the manufacturing, the stationing, or other nuclear weapons-related activity. In 1994 Mongolia stated, for the first time, that the five nuclear-weapon states had “supported Mongolia’s declaration of its territory a nuclear-weapon-free zone and expressed their intention to respect that status” and that the non-aligned movement had welcomed it as a “commendable contribution to regional stability and confidence-building.”<sup>9</sup> 1995 was notable by the absence of any mention of the Mongolian initiative in the country’s statements at the UN.

After a three-year hiatus, the new Mongolian prime minister spoke at the 1996 UNGA, declaring Mongolia’s intention to “formalize and upgrade the status of [Mongolia’s nuclear-weapon-free] zone to the international level.”<sup>10</sup> “In a broader context,” he said, “it is essential to provide assurances to non-nuclear-weapon states against the use or threat of use of nuclear weapons, in the form of an international instrument.” The “upgrade to the international level” may have been a poorly worded phrase, but the stated intention to “formalize” Mongolia’s nuclear-weapon-free zone harkened back to the stronger 1992 statement about seeking security assurances from the nuclear-weapon states—although this time the question of “assurances” was mentioned in a qualified way, as a matter of “a broader context,” not in direct relation to the specific case of Mongolia.

The 1996 statement ushered in a period of activism in promoting a nuclear-weapon-free zone for Mongolia, characterized by efforts to “institutionalize” this status. The term

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<sup>6</sup> UN General Assembly, 47<sup>th</sup> session. First Committee. *Verbatim Record of the 8<sup>th</sup> Meeting*. 16 Oct. 1992 (A/C.1/47/PV.8). Official Record. 16 Nov. 1992, p.18.

<sup>7</sup> UN General Assembly, 48<sup>th</sup> Session. First Committee. *Summary Record of the 7<sup>th</sup> Meeting*. 21 Oct. 1993 (A/C.1/48/SR.7). Official Record. 26 Nov. 1993, p.9.

<sup>8</sup> UN General Assembly, 48<sup>th</sup> Session. *Verbatim Record of the 20<sup>th</sup> Meeting*. 7 Oct. 1993 (A/48/PV.20). Official Record. 26 Oct. 1993, p.11.

<sup>9</sup> UN General Assembly, 49<sup>th</sup> Session. First Committee. *Verbatim Record of the 8<sup>th</sup> Meeting*. 21 Oct. 1994 (A/C.1/49/PV.8). Official Record. 21 Oct. 1994, p.5.

<sup>10</sup> UN General Assembly, 51<sup>st</sup> Session. *Verbatim Record of the 16<sup>th</sup> Meeting*. 1 Oct. 1996 (A/51/PV.16). Official Record. 1 Oct. 199, p. 11.

“institutionalization” was first used in 1997 in an address to the UN by the foreign minister, and has since served as the keyword in describing the Mongolian quest to legally formalize its nuclear-weapon-free status.

Two actions have characterized that quest: 1) an attempt to initiate a discussion of the concept of a single-state nuclear-weapon-free zone at the United Nations; and 2) an attempt to conclude a trilateral agreement with Russia and China, containing a protocol on security assurances to Mongolia to be signed, prospectively, by all five acknowledged nuclear-weapon states. For the purposes of this paper, the first attempt will be called a “norm-setting approach,”; the second, a “treaty-based approach.”

### ***A norm-setting approach***

Mongolia’s proposal to start deliberations at the UN on the concept of single-state nuclear weapon-free zones was prompted by awareness that the country would not be able to join a regional arrangement to promote its nuclear-weapon-free status. This was driven home when the proposal to create a Central Asian nuclear-weapon-free zone was first made in 1993, and later deliberated and negotiated. Mongolia was an interested party. However, an expanded membership in a Central Asian zone was not a popular idea among the nuclear-weapon states. More specifically, Russia and China reportedly voiced opposition to Mongolia’s participation “because of Mongolia’s lack of a common border with any of its members.”<sup>11</sup> Of course, Mongolia shares a common border with only Russia and China. The U.S. had reportedly also opposed an expanded zone in Central Asia because of worries over a possible membership in it by Iran.<sup>12</sup>

Against that backdrop, Mongolia sought to initiate deliberations at the UN that could eventually lead to the acceptance of individual states as nuclear-weapon-free zones. In 1997, Mongolia presented to the United Nations Disarmament Commission (UNDC) a working paper under the item “Establishment of nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned,” which detailed the basic principles and elements for a single-state nuclear-weapon-free zone.<sup>13</sup> It was a brief piece, emulating some of the provisions of the existing treaties on nuclear-weapon-free zones, and enumerating the proposed principles for creating single-state zones, the elements of a model agreement, and the stages of consideration of guidelines for establishing such zones. The document incorporated the statements made by the nuclear-weapon states and the non-aligned countries in relation to the Mongolian nuclear-weapon-free zone declaration.

The rationale behind the initiative was that the status of a “zone” would enable the nuclear-weapon states to extend to Mongolia the same legally binding security assurances that

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<sup>11</sup> J. Enkhsaikhan, “Mongolia’s Status: The Case for a Unique Approach,” *Asian Affairs: an American Review*, Winter 2001, 27: 4 (2001): 226

<sup>12</sup> “The contribution of nuclear-weapon-free zones to the global nuclear non-proliferation and disarmament regime,” Douglas B. Shaw, Editor, Conference Proceedings, The Elliott School of International Affairs and United States Institute of Peace, October 2011, <http://elliott.gwu.edu/assets/docs/events/nwfz-report-1019-final.pdf>, p. 14.

<sup>13</sup> Statement by Minister for External Relations of Mongolia Sh.Aktangerel at the UN General Assembly, 52<sup>nd</sup> Session. October 6, 1996, <http://www.un.int/mongolia/Archives/1997/gdebat52.htm>.

are accorded to the nuclear-weapon-free zones by virtue of the protocols to the treaties establishing such zones.<sup>14</sup> As it stands, the countries belonging to the nuclear-weapon-free zones are the only non-nuclear-weapon states that benefit from legally-binding security assurances by the nuclear-weapon states. Addressing a UNFC meeting in 1997, the Mongolian representative stated that his country intended “to ask the General Assembly to recognize Mongolia as a full-fledged nuclear-weapon-free zone.”<sup>15</sup>

In 1997, the issue of nuclear-weapon-free zones was taken up by the UNDC upon a UNGA recommendation<sup>16</sup> as part of the review of the recommendations and decisions adopted at the First UNGA Special Session on Disarmament held in 1978, the so-called SSOD1. The deliberations at the SSOD1, and in the years preceding it, were very much informed by the signing and entry into force, in 1969, of the Treaty of Tlatelolco (Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean), the first treaty in which regional countries came together to establish a nuclear-weapon-free zone, and also by the entry into force of the Nuclear Non-Proliferation Treaty (NPT), of which Article VII states, “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.” The SSOD1 noted that nuclear-weapon-free zones constituted an important disarmament measure and that their establishment should be encouraged in different parts of the world.<sup>17</sup> It came up with a principle of establishing nuclear-weapon-free zones “on the basis of arrangements freely arrived at among the States of the region concerned,” which, to date, serves as the guiding principle for the creation of such zones.

The SSOD1 deliberations on nuclear-weapon-free zones were preceded by a “comprehensive study of the question of nuclear-weapon-free zones in all its aspects” mandated by the UNGA and released in 1976. The text contained annexed comments by a number of member-states and an annexed working paper by Mexico, containing a draft definition of the concept of “nuclear-weapon-free zone” and draft obligations of the nuclear-weapon-states toward the states in the zone. The study itself was conducted by a group of governmental experts and incorporated both consensus views and diverging opinions on this complex issue, many aspects of which had yet to be further explored. Still, it contributed a great deal to subsequent debates on the subject of nuclear-weapon-free zones, not least by serving as a reference point for the Mongolian proposal of 1997 to deliberate the subject of a single-state nuclear-weapon-free zone at a UN body.

The study noted, among other things, that “obligations relating to the establishment of the nuclear-weapon-free zones may be assumed not only by groups of states, including entire

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<sup>14</sup> There are currently five acknowledged nuclear-weapon-free zones: in Latin America and the Caribbean, the South-Pacific, Southeast Asia, Africa and Central Asia

<sup>15</sup> UN General Assembly, 52<sup>nd</sup> Session. First Committee. *Verbatim Record of the 12<sup>th</sup> Meeting*, 24 Oct. 1997 (A/C.1/52/PV.12). Official Record, October 24, 1997, p. 2.

<sup>16</sup> UN General Assembly, Resolution 51/47, “Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session,” January 8, 1997, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/760/63/PDF/N9776063.pdf?OpenElement> .

<sup>17</sup> United Nations. *Resolutions and Decisions Adopted by the General Assembly During the Tenth Special Session, 23 May-30 June 1978*. General Assembly. Official Records: Tenth Special Session. Supplement No.4 (A/S-10/4). United Nations. New York, 1978.

continents or large geographical regions, but also by smaller groups of states and even individual countries.”<sup>18</sup> This latter proposition on “individual countries” was frequently cited by Mongolia to make the case for a single-state nuclear-weapon-free zone. In 1998, a representative of Mongolia asserted that “the international community recognized as far back as 1975 the right of even individual states to create nuclear-weapon-free zones.”<sup>19</sup> The reference to “individual countries” was, of course, only an expert opinion expressed in a study. Two UNGA resolutions related to the comprehensive study, adopted in 1976<sup>20</sup> and 1975,<sup>21</sup> were also frequently cited by Mongolia, especially in the late 1990s but also occasionally in the 2000s. The one issued in 1975 contained a “solemn” declaration of the definition of a nuclear-weapon-free zone, while at the same time noting that such definitions “in no way impair” past and future resolutions on the matter “nor the rights emanating for the member-states from such resolutions.”<sup>22</sup> This can hardly be seen as a recognition by the UNGA of the right of individual states to create single-state nuclear weapon-zones.

The nuclear-weapon-free states had, therefore, “major difficulties”<sup>23</sup> in agreeing to deliberate the concept of a single-state nuclear-weapon-free zone as a prospective normative concept. “Their primary concern,” Ambassador Jargalsaikhan Enkhsaikhan, the Mongolian negotiator, wrote later, was that such an acceptance “might set a dangerous precedent that could complicate their strategic calculations and policies. It is for this reason that these states have been prepared to work with Mongolia to find an acceptable solution, as they do not want to establish a standard that could be followed by other states under less agreeable circumstances.”<sup>24</sup> According to the Mongolian negotiator, the possibility that such a norm might serve as a disincentive for groups of countries to form regional nuclear-weapon-free zones was also cited by the nuclear-weapon states.

Mongolia was receptive to these concerns and to the prevailing view that the UNDC should first address the issue of the establishment of regional nuclear-weapon-free zones.<sup>25</sup> Upon consultations with the nuclear-weapon states, the Mongolian negotiator summed up their outcome by stating, “Because of its geographical location and some other factors, at this stage Mongolia has difficulty in establishing an internationally recognized single-state nuclear-weapon-free zone. The heretofore followed formula for the creation of nuclear-weapon-free zones in this case cannot be automatically applied. We recognize that.”<sup>26</sup> As a result, Mongolia’s

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<sup>18</sup> UN General Assembly. *Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All Its Aspects: Special Report of the Conference of the Committee on Disarmament*. 8 Oct. 1975 (A/10027/Add.1), p. 31

<sup>19</sup> UN General Assembly, 53<sup>rd</sup> Session. First Committee. *Verbatim Record of the 27<sup>th</sup> Meeting*. 10 Nov. 1998 (A/C.1/53/PV.27). Official Record. November 10, 1998, p.24.

<sup>20</sup> UN General Assembly, Resolution 31/70, “Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All Its Aspects,” 10 Dec. 1976, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/302/53/IMG/NR030253.pdf?OpenElement>.

<sup>21</sup> UN General Assembly, Resolution 3472 B (XXX), “Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All Its Aspects,” 11 Dec. 1975, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/85/IMG/NR000185.pdf?OpenElement>.

<sup>22</sup> *Ibid.*, p.5.

<sup>23</sup> J. Enkhsaikhan, “Concept and Practice,” 353

<sup>24</sup> *Ibid.*, 358

<sup>25</sup> Jargalsaikhany Enkhsaikhan, “Single-State NWFZs: A Response to NWFZ Blind Spots,” *The Mongolian Journal of International Affairs* 14 (2007): 35

<sup>26</sup> A/C.1/53/PV.27:1



initiative to create a nuclear-weapon-free zone on its territory morphed into what came to be known as Mongolia's "nuclear-weapon-free status," later formalized in a UN General Assembly resolution (to be discussed below).

As a result of the 1997-1999 deliberations at the UNDC on the establishment of nuclear-weapon-free zones, the UNDC adopted a report known as the Guidelines on the Establishment of Nuclear-Weapon-Free Zones, which constitutes, to date, the internationally accepted norm for the establishment of such zones. In a testimony to the growing prominence of Mongolia as a nuclear-weapon-free state pursuing the same objectives as the nuclear-weapon-free zones, the Guidelines included a footnote acknowledging this fact, which stated, "Owing to its unique geographical circumstances, Mongolia has declared its nuclear-weapon-free status in order to promote its security. This status was welcomed by the General Assembly in its consensus resolution 53/77 of 4 December 1998."<sup>27</sup>

The 1999 Guidelines reprised the SSOD1 formula to the effect that nuclear-weapon-free zones should be established "on the basis of arrangements freely arrived at among the states of the region concerned." The Guidelines also noted that initiatives on this matter should emanate from states within the region and pursued by all states of that region, and that the nuclear-weapon states should be consulted during the negotiations of each treaty and its relevant protocols. The use of the plural in the word "states" effectively shut the possibility for Mongolia to further pursue the institutionalization of its status by setting a norm that would allow individual states to create a single-state nuclear-weapon-free zone which would provide them with legally binding negative security assurances on the part of the nuclear-weapon-states.

### ***A treaty-based approach***

The other action Mongolia took to institutionalize its nuclear-weapon-free status was to submit a draft trilateral agreement to Russia and China in an attempt to create a legal instrument granting security assurances to Mongolia. For the purposes of this paper, let us call it a treaty-based approach.

This course of action was one of the several options discussed at a 2001 UN-sponsored meeting of experts in Sapporo, Japan, on ways to codify Mongolia's nuclear-weapon-free status.<sup>28</sup> In a proposal attached to the report on the meeting, Mongolia enumerated a number of steps to be taken, including "the need to work on a legally binding instrument on Mongolia's status."<sup>29</sup> A UN report detailing Mongolia's activities pertinent to the matter<sup>30</sup> noted that, by 2001, the country was considering two options: "(i) conclusion of a legal instrument on Mongolia's nuclear-weapon-free status with its two immediate neighbors—China and the Russian Federation—with a separate protocol to be signed by all five nuclear-weapon States; and

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<sup>27</sup> United Nations. *Report of the Disarmament Commission*. General Assembly. Official Records. Fifty-Fourth Session. Supplement No. 42 (A/54/42). United Nations. New York, 1999: 10.

<sup>28</sup> UN General Assembly, 57<sup>th</sup> Session, *Letter dated 12 March 2002 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*. 20 March 2002 (A/57/59).

<sup>29</sup> *Ibid.*: 6.

<sup>30</sup> The UN Secretary General issues biennial reports on Mongolia's International Security and Nuclear-Weapon-Free Status, as mandated by UN General Assembly Resolution A/53/77D.

(ii) international recognition and institutionalization of its nuclear-weapon-free status through the creation of an international custom on the status.”<sup>31</sup> Mongolia chose the first of these options as “the most suitable and practically implementable.”<sup>32</sup>

The public statements by Mongolia on the trilateral legal instrument did not directly refer to seeking negative security assurances, let alone legally-binding ones, from its two neighbors and the other nuclear-weapon-states. The purpose of the trilateral agreement was generally described to be to “clearly define” the status and, likewise, to “clearly define” the commitments by the other parties toward that status.

In 2002, Mongolia stated that it “proposed to institutionalize the status by concluding a multilateral agreement to which our two immediate neighbors, China and Russia, have, in principle, responded positively.”<sup>33</sup> Earlier that year a draft document on the basic elements of a treaty between Mongolia, Russia and China was presented to both countries. Finally, in 2007, following their positive response,<sup>34</sup> Mongolia submitted to them a draft trilateral treaty. According to a description presented by Mongolia for a UN report, the draft spelled out the obligations of Mongolia and commitments by its neighbors and addressed cooperation in strengthening its nuclear-weapon-free status, the peaceful uses of nuclear energy, the physical protection of nuclear material, notification of nuclear-related activities and early warning in the case of a nuclear accident. It also dealt with control and verification issues without necessarily setting up a standing mechanism. A draft protocol intended for signature by the other three nuclear-weapon states to respect the treaty and contribute to its full implementation was also proposed.<sup>35</sup> The content of a proposed “separate protocol” to a trilateral agreement with Russia and China remained vague except the clause on the “respect” for the status which emulated the Rarotonga and Bangkok treaties on nuclear-weapon-free zones in the south Pacific and in Southeast Asia.

In 2009, Mongolia held two rounds of discussions with Russia and China in Geneva on its proposed draft. At the last one held in September 2009, the representative of Mongolia was more specific on the nature of the assurances that he sought. He indicated that Mongolia had no reason to believe that nuclear weapons would be used against it by its neighbors because of the “nature” of its relations with its neighbors, and stated that “unlike other nuclear-weapon-free zones to which [the nuclear-weapon-states] provide or are expected to provide assurances [not to use] or threat[en to] use nuclear weapons, the trilateral treaty would only require Russia and China not to contribute to any act that might compel Mongolia to violate its nuclear-weapon-free status.”<sup>36</sup> Like negative security assurances, from which, with this statement, Mongolia seemed to back away, the commitment “not to contribute to any act that constitutes a violation” of the

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<sup>31</sup> UN General Assembly, 59<sup>th</sup> Session, *Mongolia’s international security and nuclear-weapon-free status: Report of the Secretary-General*. September 16, 2004 (A/59/364):3.

<sup>32</sup> Ibid.

<sup>33</sup> UN General Assembly, 57<sup>th</sup> Session. First Committee. Statement by Mongolia. October 3, 2002, [http://www.un.int/mongolia/Sub\\_Doc\\_3/Statement%20by%20amb.J.Enkhsaikhan%20Oct3.2002.htm](http://www.un.int/mongolia/Sub_Doc_3/Statement%20by%20amb.J.Enkhsaikhan%20Oct3.2002.htm).

<sup>34</sup> A/59/364: 3

<sup>35</sup> UN General Assembly, 63<sup>rd</sup> Session, *Mongolia’s international security and nuclear-weapon-free status: Report of the Secretary-General*. July 14, 2008 (A/63/122):3

<sup>36</sup> Remarks by Ambassador J. Enkhsaikhan at the second Mongolia-Russia-China trilateral meeting, Geneva, September 27, 2009, <http://www.embassyon.at/download/17.statement.pdf>.

treaty is a routine language used in the protocols to all the treaties establishing nuclear-weapon-free zones. The Mongolian representative also noted that the draft protocol to the treaty envisaged that the other nuclear-weapon-states join the agreement at a later stage, if they so decided.

At the talks in Geneva, Russia and China handed to Mongolia a list of questions concerning the draft treaty and made it clear that they wanted the other three nuclear-weapon states involved<sup>37</sup> if the talks were to proceed further. Mongolia held a meeting with the representatives of all five NPT member nuclear-weapon states in New York in May 2010, on the margins of the NPT Review Conference, and informed them of the talks in Geneva.

At the conference itself, Mongolia did not reference the phrase “not to contribute to any act,” but instead described institutionalization as seeking a treaty-based commitment from the nuclear-weapon-states to “respect” the Mongolian nuclear-free status as “a unique form of a nuclear-weapon-free zone that reflects its geographical and geopolitical location.”<sup>38</sup> The reference to “respecting” the treaty is also language from the treaties on nuclear-weapon-free zones.

What transpired from these statements was an indication that although Mongolia continued to seek legally binding assurances by means of a treaty with which it felt comfortable, the assurances it sought did not involve a commitment not to use or threaten to use nuclear weapons against it.

It was not clear, however, if the provisions directly taken from the protocols to the treaties on nuclear-weapon-free zones were viewed by Russia, China, and other nuclear-weapon states as a less demanding commitment than negative security assurances, as suggested by Mongolia. None of them was keen to conclude a trilateral agreement with Mongolia or join a prospective protocol. In the 1993 Mongolian-Russian Treaty on Friendly Relations, Russia had already pledged respect for “Mongolia’s policy of not admitting the deployment on and transit through its territory of foreign troops, nuclear and other weapons of mass destruction.”<sup>39</sup> A similar statement was made by China in 1994.<sup>40</sup> Clearly, the two countries were not ready to consider signing a separate treaty with Mongolia on a specific nuclear-related issue.

China may have had fewer qualms than the others; it is the only nuclear-weapon state known to be supportive of unconditional security assurances to non-nuclear-weapon states, most notably of an international legally-binding instrument on negative security assurances. In 1993 it stated that it would “respect [Mongolia’s] policy of turning its territory into a nuclear-weapon-free zone.”<sup>41</sup> In 2003, China reiterated that it “respect[ed] and welcome[ed] the nuclear-weapon-

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<sup>37</sup> 2010 Review Conference of the Parties to the Treaty on Non-Proliferation of Nuclear Weapons. *Final Document. Volume II, Part III, Documents Issued at the Conference* (NPT/CONF.2010/50 Vol. II). United Nations. New York, 2010: 4.

<sup>38</sup> 2010 NPT Review Conference. Statement by Mongolia. May 5, 2010, [http://www.un.org/en/conf/npt/2010/statements/pdf/mongolia\\_en.pdf](http://www.un.org/en/conf/npt/2010/statements/pdf/mongolia_en.pdf).

<sup>39</sup> UN General Assembly, 1997 substantive session of the Disarmament Commission. April 22, 1997. Working paper submitted by Mongolia. (A/CN.10/195): 3

<sup>40</sup> *Ibid.*: 3-4

<sup>41</sup> A/CN.10/195: 3

free status of Mongolia.”<sup>42</sup> As discussed above, seeking “respect” for its status was one of Mongolia’s “institutionalization” goals, although it wanted that “respect” enshrined in a legal instrument. In 2004, China expressed its support for Mongolia’s efforts “to secure its nuclear-weapon-free status”<sup>43</sup> which, most probably, referred to that status’s institutionalization.

The Russian position was more ambiguous. Russia, clearly, was reluctant to commit to another treaty with Mongolia on a nuclear-related subject. In a statement made in 1993, in response to the initial Mongolian declaration on its nuclear-weapon-free zone, a Russian representative had recalled the above-cited provision of the 1993 bilateral Treaty and noted, specifically, that the other nuclear-weapon states had also made statements on this subject. Russia further stated that it intended, “like other nuclear Powers,” to respect the nuclear-weapon-free status of Mongolia.<sup>44</sup> So the Russian desire to have all nuclear-weapon states involved in the discussions on Mongolia’s status was nothing new; Russia has always favored a group approach. This position was explicitly re-stated in the Mongolian-Russian Joint Statement of June 2011, where Russia said it was “ready to continue to discuss, together with the other states of ‘the nuclear five,’ Mongolia’s proposal to strengthen the assurances regarding its nuclear-weapon-free status.”<sup>45</sup>

Faced with quiet resistance from the nuclear-weapon states, the idea of a multilateral agreement with a protocol annexed to it quietly faded away. In lieu of a formal agreement, Russia and China, along with the United Kingdom, joined the United States and France for the first time in co-sponsoring the 2010 UNGA resolution on Mongolia’s nuclear-weapon-free status.

But even if the governments of the nuclear-weapon states had not had problems with granting Mongolia treaty-based assurances, it is not clear that a treaty and its protocol would have been successfully ratified by their respective legislatures; not when difficult debates related to their individual nuclear policies—as well as the overall relationships among major powers and wider global nuclear politics—consume much of their attention. It is therefore valid to question the political feasibility of a treaty-based approach to Mongolia’s nuclear-weapon-free status. Furthermore, a treaty-based approach is also steeped in outdated thinking, which overlooks the fact that the five nuclear-weapon-states acknowledged by the NPT are no longer the only nuclear-armed states in the world, and that with the increased dangers of nuclear proliferation and of non-state actors acquiring nuclear weapons, a treaty concluded with two or five nuclear-weapon-states would be only half a solution.

In 2012, Mongolia modified its approach, and the earlier proposal not to contribute to acts that would violate Mongolia’s nuclear-weapon-free status, previously put forward before Russia and China, was extended to all nuclear-weapon-states. The new approach was articulated

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<sup>42</sup> 2010 NPT Review Conference, *Working Paper on Nuclear-Weapon-Free Zones Submitted by China* (NPT/CONF.2005/PC.II/WP.5), [http://www.un.org/ga/search/view\\_doc.asp?symbol=NPT/CONF.2005/PC.II/WP.5](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2005/PC.II/WP.5)

<sup>43</sup> UN General Assembly, 61<sup>st</sup> Session. *Letter dated 16 August 2006 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*. August 18, 2006 (A/61/293): 21

<sup>44</sup> A/CN.10/195:3

<sup>45</sup> Mongolian-Russian Joint Statement. June 6, 2011,

[http://mfat.gov.mn/index.php?option=com\\_blog\\_calendar&year=2011&month=06&day=02&modid=62&lang=mn](http://mfat.gov.mn/index.php?option=com_blog_calendar&year=2011&month=06&day=02&modid=62&lang=mn).

by Mongolia's foreign minister in an address to the UN Conference on Disarmament in March 2012. He noted, "The uniqueness of Mongolia's case resides in the fact that it cannot be part of any traditional [i.e. regional] nuclear-weapon-free zones. This unique case needs [an] equally unique approach. The assurance that Mongolia is seeking, bearing in mind that it is located between two nuclear-weapon states, is to have the P5 formally recognize its status and commit not to contribute to any act that would violate that status."<sup>46</sup> In an important development, this statement did not contain any mention of a treaty, legal instrument, or legally binding assurances, and only mentioned that the content and format of such assurances were subject to further discussions.

In May 2012, at a meeting with representatives of the five nuclear-weapon states in Vienna, this statement was reiterated, but with a caveat: no reference was made to a "formal recognition" of the Mongolian nuclear-free status but simply to its "recognition." On the other hand, Mongolia expressed dissatisfaction with the Joint Statement on Security Assurances to Mongolia, issued by the five nuclear-weapon states back in October 2000 in connection with Mongolia's nuclear-weapon-free status (to be discussed below). The Joint Statement was described as "counter-productive," a novel characterization which seemed to diminish the political importance of the statement. Mongolia also reiterated that it was no longer insisting on the negative security assurances, but on a "recognition" of its status and a pledge "not to contribute to acts that would violate this status." Mongolia appeared to be flexible on both points: firstly, no adjective was attached to the word "recognition," and secondly, it spoke of an "appropriate assurance" of which the content and format could be agreed upon at a later date. It was suggested that the parties come to an agreement in 2012, the twentieth anniversary of the Mongolian initiative.<sup>47</sup> Reportedly, a U.S.-drafted proposal on the matter has also been circulated.

Mongolia's revised approach is notable for a greater flexibility. It is to be assumed that, as long as no legal instrument is envisaged as part of this approach, it should not be difficult for the nuclear-weapon states to declare that they will not contribute to any act violating Mongolia's nuclear-free status. They might, nonetheless, be reluctant to do so to avoid the appearance of recognizing Mongolia as a single-country nuclear-weapon-free zone by using language ("respect," "not to contribute") that emanate from the protocols associated with such zones. A statement or declaration recognizing Mongolia's nuclear-weapon-free status also should not be a problem. The significance of Mongolia's new approach lies elsewhere. By no longer insisting on a legal institutionalization of its status or on a legally-binding assurance, Mongolia has come full circle, which is to say that the project to achieve "institutionalization" of its nuclear-weapon-free status now finds itself where it started with the statement to the UNGA in 1992: namely, achieving the recognition of Mongolia's nuclear-weapon-free status.

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<sup>46</sup> Statement by Foreign Minister G.Zandanshatar at the Conference on Disarmament. March 27, 2012, [http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/BFC56F81029AADD0C12579CE00345DD7/\\$file/Mongolia.pdf](http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/BFC56F81029AADD0C12579CE00345DD7/$file/Mongolia.pdf).

<sup>47</sup> Statement by Ambassador J. Enkhsaikhan at the Meeting with the representatives of the nuclear-weapon states. May 7, 2012. <http://www.embassyon.at/download/meeting%20with%20P5%20%20Inroduction%20%20%207%20May%202012.pdf>.

## RECOGNITION

This task should be made easier by the simple fact that Mongolia's nuclear-weapon-free status is already an internationally recognized status. Ironically, however, this fact has been disputed by Mongolia itself. Despite numerous resolutions of the UNGA on Mongolia's nuclear-weapon-free status since 1998, Mongolia has asserted, on multiple occasions, that the UN General Assembly "has not recognized [its] status."<sup>48</sup>

Yet Mongolia's nuclear-weapon-free status, as discussed above, does not and cannot have a legal standing conferred by a treaty or convention, since it traces its origins to a unilateral declaration of policy, not to a treaty. Mongolia has already acknowledged this state of affairs by conceding, after its treaty-based approach toward "institutionalization" did not gain much traction, that it cannot be party to a treaty on a regionally-established nuclear-weapon-free zone because of its location.

There are two ways to explain Mongolia's assertion that its nuclear-weapon-free status has not been internationally recognized. The first is the literal interpretation of a definition of a nuclear-weapon-free zone, provided in a 1975 UNGA resolution which "solemnly" declared that such a zone "shall, as a general rule, be deemed to be any zone recognized as such by the General Assembly of the United Nations, which any group of states, in the free exercise of their sovereignty, has established by virtue of a treaty or convention."<sup>49</sup> This declaration was passed in the context of the discussions in the mid-1970s on a "comprehensive study of the question of nuclear-weapon-free zones in all its aspects." Mongolia had, on several occasions, called for a new such study, most recently at the 2010 NPT Review Conference and the recent May 2012 session of the Preparatory Committee for the 2015 NPT Review Conference.

But, as explicitly stated in the above declaration, the currently existing nuclear-weapon-free zones gain their internationally recognized legal status not through an action by the UN General Assembly, but by virtue of a treaty or convention that the countries belonging to these zones conclude among themselves and duly register with the United Nations, as required by Article 102 of the UN Charter. Also, the protocols to these treaties are equally legal instruments that require a formal signing and a formal ratification by the nuclear-weapon states. The recognition of Mongolia's status by the UN comes from the political clout of UNGA resolutions which, starting in 1998, have invariably referred to "the internationally recognized status of Mongolia."

Secondly, the Mongolian government's assertion that the nation's nuclear-weapon-free status has not been recognized could be explained by the fact that in their Joint Statement on this issue made in October, 2000, the five nuclear-weapon states had *welcomed the declaration by Mongolia of its status* (hereinafter "the formulation") instead of welcoming the status itself. Earlier that year, the same formulation was used in the Final Document of the 2000 NPT Review Conference, and it re-appeared in the Final Document of the 2010 NPT Review Conference. The UNGA has used this language both in its very first resolution on Mongolia's nuclear-weapon-

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<sup>48</sup> Ibid. The 1998 UNGA resolution "welcome[d] the declaration by Mongolia of its nuclear-weapon-free status," but did not explicitly accept or endorse it.

<sup>49</sup> UN General Assembly Resolution 3472 B (XXX).

free status in 1998 and in its last one, adopted in 2010. This formulation was believed to attest to the fact that the nuclear-weapon states have not recognized Mongolia's status and have only acknowledged its declaration. This formulation has been a source of frustration to Mongolia. However, it could be argued that it was Mongolia's own preoccupation with the legal institutionalization of its status, a goal unlikely ever to succeed, that has been a distraction which prevented it from pursuing more focused consultations with the nuclear-weapon states on this matter.

After submitting a draft trilateral treaty to Russia and China, Mongolia has labored to secure in the documents of the non-aligned movement and of the gatherings of the nuclear-weapon-free zones the inclusion of provisions expressing support for its *policy to institutionalize* the status and welcoming the talks with Russia and China – in an apparent desire to impress with the numerical force of the support behind Mongolia's actions. For example, the earlier, stronger statement by the first conference of the nuclear-weapon-free zones, held in 2005, which expressed “recognition and full support”<sup>50</sup> for the Mongolian status was reduced, in 2010, to “support for Mongolia's *policy to institutionalize* this status.”<sup>51</sup> By insisting on recognition of this “institutionalization,” Mongolia thus has weakened the statements of support for its nuclear-weapon-free status.

The best opportunity for Mongolia to try to change the formulation that “*welcomed the declaration by Mongolia of its status*” to one that “*welcomed the status*” itself—may have been in the run-up to and at the 2010 NPT Review Conference. But Mongolia's negotiating position at the conference was, again, to try to gain support from the nuclear-weapon states for its *policy to institutionalize* the status and, apparently, as a bargaining chip, keep intact the above formulation. But the nuclear-weapon states opposed any mention of *institutionalization*. Also, because the question of changing the formulation had neither been raised or negotiated during the preparatory process to the NPT Review Conference nor reflected in Mongolia's written submissions for the draft Final Document, the formulation remained as was.

In the meantime, the overall U.S. position at the Review Conference was a positive one, and the United States may have had no major problem with welcoming Mongolia's status. After all, in 2011, the United States was able to say that it “applauded Mongolia's nuclear-weapon-free status.”<sup>52</sup> Individually, Russia and China had indicated as early as 1993 and 1994, respectively, that they were comfortable in pledging their respect for Mongolia's nuclear-weapon-free status. Beginning in 2006, France did not have a major problem co-sponsoring a UNGA resolution which referenced *the internationally recognized status of Mongolia*. Therefore, the assertion that the UN General Assembly has not recognized the status, and that the nuclear-weapon states were

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<sup>50</sup> UN General Assembly, 60<sup>th</sup> Session. *Letter dated 27 June 2005 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General*, 14 Jul, 2005 (A/60/121)

<sup>51</sup> Outcome Document, Second Conference of Nuclear-Weapon-Free Zones and Mongolia. New York, April 30, 2010 (NWFZM/CONF.2010/1), [http://www.opanal.org/Docs/seminars/2010NWFZConf/NWFZ-CONF.2010-1\\_english.pdf](http://www.opanal.org/Docs/seminars/2010NWFZConf/NWFZ-CONF.2010-1_english.pdf).

<sup>52</sup> Joint US-Mongolia Statement, June 16, 2011, <http://www.whitehouse.gov/the-press-office/2011/06/16/us-mongolia-joint-statement>.

the primary culprits in this,<sup>53</sup> does not provide the full picture. Mongolia, too, has taken its eyes off the ball.

The UN General Assembly is the premier world institution with unquestioned legitimacy, which passes institutionalized decisions formalized in its resolutions. It could be argued, therefore, that by agreeing to discuss the issue of Mongolia's nuclear-weapon status on a biannual basis—as well as to adopt resolutions on this matter and enjoin the UN Secretary-General to regularly report on their implementation—the UNGA has not only recognized Mongolia's nuclear-weapon-free status but also has properly institutionalized this status. Additionally, on a number of occasions Mongolia has described itself as “a country with an internationally recognized status” (2007)<sup>54</sup> and has stated that its status “enjoys full international recognition,”<sup>55</sup> thus weakening its own claims that its status has not been properly recognized.

Although most of Mongolia's past efforts were directed at achieving a legal institutionalization of its nuclear-weapon-free status, it appears that the option it pondered in 2001, described as “international recognition and institutionalization of its nuclear-weapon-free status through the creation of an international custom on the status,”<sup>56</sup> has met with greater practical success. The past twenty years saw the emergence of an entire body of bilateral, international, and multilateral documents and statements attesting to the recognition of Mongolia's nuclear-weapon-free status by the international community. Accounts of these statements and documents follow.

### ***The UN General Assembly resolution***

The most important document that confers legitimacy to Mongolia's nuclear-weapon-free status is the UN General Assembly's biannual resolution entitled “Mongolia's International Security and Nuclear-Weapon-Free Status.”<sup>57</sup> As discussed above, the first such resolution was passed in 1998, following an unsuccessful attempt by Mongolia to initiate deliberations at the UN regarding the concept of a single-country nuclear weapon-free zone. It came into being as a result of a year-long consultation process with the nuclear-weapon states during which Mongolia was adamant that the resolution address its broader security concerns. The resolution incorporated this concern by calling on member states to cooperate with Mongolia on such broad issues as the strengthening of its independence, sovereignty and territorial integrity; the inviolability of its borders; its economic security; and its ecological balance. Notably, it also expressed support for Mongolia's good-neighborly and balanced relations with its two neighbors, describing them as an important element of strengthening regional peace, security and stability.

However, for a resolution dealing with a nuclear-weapon-free status of Mongolia, the UN resolution is rather scant in substance on that very matter. The initial resolution did welcome the

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<sup>53</sup> As in a statement by Ambassador J. Enkhsaikhan. May 2012.

<sup>54</sup> UN General Assembly, 62<sup>nd</sup> Session. *Verbatim Record of the 12<sup>th</sup> Meeting*. October 1, 2007 (A/62/PV.12). Official Record. October 1, 2007, p.21.

<sup>55</sup> UN General Assembly, 65<sup>th</sup> Session. First Committee. Statement by Mongolia, October 8, 2010, [http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com10/statements/8Oct\\_Mongolia.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com10/statements/8Oct_Mongolia.pdf)

<sup>56</sup> A/59/364: 3.

<sup>57</sup> UN General Assembly Resolution 53/77D.



Mongolian decision to declare the country a *zone*, but the subsequent resolutions were silent on that term. In its preamble, the resolution refers, invariably, to *the internationally recognized status* of Mongolia. This remains, to date, the only provision that acknowledges both the recognition of the status by individual countries, and the overall sentiment of the General Assembly. The 1998 resolution included a provision *welcoming the declaration by Mongolia* of its nuclear-weapon-free status (in UN parlance, the word “welcome” signals the strongest possible support for an initiative), but it stopped short of explicitly welcoming the status itself. This formulation was absent from the subsequent UNGA resolutions until 2010, when it re-appeared to reflect the language of the 2010 NPT Review Conference. In the intervening years, there was barely any substantive progress on this matter, as Mongolia was consumed with attempts to attain a legal formalization of its status, and the nuclear-weapon states were slow to adjust their thinking.

It is noticeable that even though the resolution comments that Mongolia’s nuclear-weapon-free status contributes to enhancing stability and building confidence in the region, it makes no reference to this status as contributing to nuclear non-proliferation and nuclear disarmament. It was only after Mongolia passed a domestic law on its nuclear-weapon-free status that the UN resolutions have referred to the concept, and they have done so only in the resolution’s preambular paragraph, stating that the “the adoption” of this law is “a concrete step towards promoting the aims of nuclear non-proliferation.”<sup>58</sup>

In a more pragmatic development, the latest Mongolian statements indicate that Mongolian priorities are shifting toward strengthening the UNGA resolution and enlisting stronger support from the nuclear-weapon states for the Mongolian initiative, one that would state that Mongolia’s status demonstrably contributes to nuclear non-proliferation.

Among the nuclear-weapon states, the United States was the first to become a co-sponsor of the resolution, in 2004. France joined two years later, and in 2010 all five nuclear-weapon states, including Russia and China, co-sponsored the resolution. This latest move was an indication that, on the matters concerning Mongolia’s nuclear-weapon-free status, the nuclear-weapon states were more willing to act as a group, and to do so in the context of the UN resolutions and within the confines of the UN, rather than through a stand-alone treaty.

Mongolia’s focus appears now to be shifting toward consulting with the nuclear-weapon states to ensure that their different national perspectives are harmonized in a common stance in support of Mongolia’s nuclear-weapon-free status, which could be reflected in a revised and stronger UNGA resolution on this status.

### ***The Joint Statement***

In October 2000, all five nuclear-weapon states issued, at the UN, a “Joint Statement on Security Assurances in Connection With Mongolia’s Nuclear-Weapon-Free Status.” The statement was introduced by a representative of the United States who specifically noted that it

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<sup>58</sup> UN General Assembly Resolution 65/70, “Mongolia’s International Security and Nuclear-Weapon-Free Status.” December 8, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/516/74/PDF/N1051674.pdf?OpenElement>

was issued in this way because, due to its unique geographic status, Mongolia was unable to obtain the security assurances that are provided by protocols to nuclear-weapon-free zone treaties.<sup>59</sup>

Substantively, the statement was nothing more and nothing less than a reaffirmation of the individually-stated and qualified (except in the case of China) negative and positive security assurances by the nuclear-weapon states which were contained in Security Council Resolution 984 (1995) and issued ahead of the 1995 Non-Proliferation Treaty Review Conference. It was a rather bland document, and, like the UN resolution, it did not acknowledge the non-proliferation value of Mongolia's status. But it was politically significant in that it pledged cooperation regarding the implementation of the UN resolution on Mongolia, and raised the profile of Mongolia's nuclear-weapon-free status as an internationally recognized status.

Nevertheless, Mongolia did not appear to be enthusiastic about the Joint Statement. It issued a statement of its own which, noticeably, did not welcome the statement and, foreshadowing its later course of action, described it as "an important step towards institutionalizing" its nuclear-weapon-free status.<sup>60</sup> Additional foreshadowing came in the introductory remarks accompanying the Joint Statement, which noted that the five nuclear-weapon countries believed that by issuing the statement, they had fully carried out their commitment to Mongolia under the UNGA resolution 53/77.<sup>61</sup> In an explicit indication of opposition to the legalization of the Mongolian status, it was noted that the statement was not eligible for registration under Article 102. These statements set the stage for the next ten years of debate, which could have, and should have, been spent sorting out the verbal ambiguities of "recognizing the status" versus "recognizing the declaration of the status" which have fueled the perception that the nuclear-weapon states do not recognize a nuclear-weapon-free Mongolia.

### ***Bilateral expressions of support***

Yet individual statements by the nuclear-weapon states have been supportive of the Mongolian initiative, and they have been documented in a number of Mongolian memoranda and working papers.<sup>62</sup> The initial statements of these states were, for most part, reiterations of these countries' general stances on security assurances to non-nuclear-weapon states. Russia and China

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<sup>59</sup> Statement by Mr. John D. Holum, US Under Secretary of State for Arms Control and International Security, on behalf of France, the People's Republic of China, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, in the United Nations First Committee General Debate. 5 Oct. 2000, <http://www.un.int/mongolia/Archives/2000/p-5sta-1.htm>.

<sup>60</sup> UN General Assembly, 55<sup>th</sup> Session, *Letter dated 16 October 2000 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*. October 17, 2000 (A/55/491-S/2000/994).

<sup>61</sup> Statement by Holum.

<sup>62</sup> See UN General Assembly, 54<sup>th</sup> Session. *Letter dated 3 September 1999 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*, 7 Sep. 1999 (A/54/323-S/199/951); UN General Assembly, 63<sup>rd</sup> Session, *Identical letters dated 30 April 2008 from the Permanent Representative of Mongolia to the United Nations addressed to the President of the General Assembly and the President of the Security Council*. 20 May, 2008 (A/63/73-S/2008/297); 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

*Memorandum of the Government of Mongolia regarding the consolidation of its international security and nuclear-weapon-free status: A brief history of the issue*. 22 March 2010 (NPT/CONF.2010/12); also A/CN.10/195, A/61/293.

both pledged to respect Mongolia's status, and the other three have commended or welcomed the decision to declare Mongolia a nuclear-weapon-free *zone* (this term has been used in their initial statements). In 2000, Russia was the first among the nuclear-weapon states to recognize that Mongolia's status contributed to the consolidation of a non-proliferation regime on the Asian continent, along with the Central Asian nuclear-weapon-free zone.<sup>63</sup> In 2006, it once again stated the value of the Mongolian initiative for the non-proliferation regime and noted its ambition for building confidence in Northeast Asia and beyond.<sup>64</sup> In 2009, Mongolia and Russia both noted the importance of nuclear-weapon zones for strengthening the non-proliferation regime, and declared that "the internationally recognized status of Mongolia represented a substantial contribution to this process."<sup>65</sup> The Russian statements suggest a clear recognition that Mongolia possesses a status which, although not enshrined in a legal instrument, by virtue of the legitimacy conferred to it by the UN, is part of the regional and, by extension, global efforts towards non-proliferation.

In contrast to Russia, the Chinese approach has been more assurance-based. It has not referred to Mongolia's status as a contribution to non-proliferation, and it has stated, in 1993, that its pledge not to use or threaten to use nuclear weapons against non-nuclear-weapon states applied to Mongolia as well.<sup>66</sup> In 2011, China reaffirmed its support for Mongolia's efforts to promote its nuclear-weapon-free status, its national security and its vital interests through political and diplomatic means.<sup>67</sup> In 2012, China reiterated its statement that it "respects and welcomes Mongolia's nuclear-weapon-free status."<sup>68</sup>

The United States has been supportive of the Mongolian initiative but, like Russia, opposed its legal institutionalization. The U.S. approach has been to reiterate its general position on security assurances extended to the non-nuclear-weapon states. A 2005 Joint Mongolian-U.S. Statement did not mention the Mongolian status. But in 2010, speaking at a conference of nuclear-weapon-free zones and Mongolia, a U.S. representative spoke of the status as "a concrete step in support of nuclear non-proliferation" and expressed a readiness to "coordinate" with Mongolia in institutionalizing its status.<sup>69</sup> In 2011, in a Mongolia-U.S. Joint Statement, the United States "applauded Mongolia's nuclear-weapon-free status."<sup>70</sup> The United Kingdom and France have largely been comfortable with the accepted language of the 2000 Joint Statement and the NPT Review Conferences.

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<sup>63</sup> Mongolian-Russian Ulaanbaatar Declaration. November 2000, <http://www.mongolia.mid.ru/en/relations.html>

<sup>64</sup> Mongolian-Russian Moscow Declaration. December 2006, <http://www.mongolia.mid.ru/en/relations.html>

<sup>65</sup> Mongolian-Russian Declaration on Strategic Partnership. August 2009, <http://www.mongolia.mid.ru/en/relations.html>.

<sup>66</sup> A/CN.10/195: 3

<sup>67</sup> Mongolian-Chinese Joint Statement on Strategic Partnership. June 2011, [http://mfat.gov.mn/index.php?option=com\\_blog\\_calendar&year=2011&month=06&day=21&modid=62&lang=en](http://mfat.gov.mn/index.php?option=com_blog_calendar&year=2011&month=06&day=21&modid=62&lang=en).

<sup>68</sup> Statement by China at the First Session of the Preparatory Committee for the 2012 NPT Review Conference. Vienna. April 30, 2012,

<http://www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2012/statements/20120430/China.pdf>.

<sup>69</sup> United States Mission at the United Nations, "Remarks by Ambassador Susan Burk, Special Representative of the President for Nuclear Non-Proliferation, at the Second Conference for States Parties and Signatories to Treaties that Establish Nuclear-Weapon-Free Zones, UN Headquarters" April 30, 2010, <http://usun.state.gov/briefing/statements/2010/141356.htm>.

<sup>70</sup> US-Mongolia Joint Statement. June 2011.

## ***Mongolian law on nuclear-weapon-free status***

Mongolia's nuclear-weapon free status has been enshrined in a piece of domestic legislation, the Law on Nuclear-Weapon-Free Status, adopted in February 2000.<sup>71</sup> According to the Parliamentarians for Nuclear Non-proliferation and Disarmament (PNND; a membership forum comprising legislators from around the world), Austria, New Zealand and the Philippines have enacted similar legislation.<sup>72</sup> The Mongolian legislation prohibits an individual, a legal person, or a foreign state from committing, initiating or participating in the following acts or activities related to nuclear weapons on the territory of Mongolia: developing, manufacturing or otherwise acquiring, possessing or having control over nuclear weapons; stationing or transporting nuclear weapons by any means; testing or using nuclear weapons; and dumping or disposing of nuclear weapons-grade radioactive material or nuclear waste. Transportation through the territory of Mongolia of nuclear weapons, parts or components thereof, as well as of nuclear waste or any other nuclear material designed or produced for weapons purposes, is also prohibited.<sup>73</sup> The Law contains monitoring provisions, both domestic and in cooperation with international organizations, and criminalizes the violations of its provisions. For all intents and purposes, with the passage of this law, the territory of Mongolia became a single-state nuclear-weapon-free zone jurisdiction for the state of Mongolia. The nuclear-weapon states did not comment on the passage of the law as they saw it as a domestic matter for Mongolia.<sup>74</sup>

In 2006, an inter-agency review of the implementation of the Law was conducted, and its findings were submitted to the UN.<sup>75</sup> The review noted, among other things, the lack of national capacity in the detection of illicit nuclear and radioactive material. In one of the most tangible efforts to implement the provisions of the Law and the UNGA resolutions on Mongolia's nuclear-weapon-free status, Mongolia's request of assistance from the 1540 Committee<sup>76</sup> in developing this capacity was answered by the U.S. government, which helped to install radiation detection equipment at several border crossings in Mongolia.

## ***Support from the non-aligned movement***

Support from the non-aligned movement for Mongolia's nuclear-weapon-free status has played an important role in raising Mongolia's international profile on this issue and strengthening its association with the goals pursued by nuclear-weapon-free zones. The non-

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<sup>71</sup> Text available in English on the website of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. See "Law of Mongolia on Its Nuclear-Weapon-Free Status, Adopted February 3, 2000," [http://www.opanal.org/NWFZ/Mongolia/Mlaw\\_en.html](http://www.opanal.org/NWFZ/Mongolia/Mlaw_en.html).

<sup>72</sup> Parliamentary Actions for Nuclear Disarmament. *Roundtable discussion*. October 24, 2011, <http://www.gsainstitute.org/gsi/events/Oct242011/pnnd.html>

<sup>73</sup> UN General Assembly, 55<sup>th</sup> Session. *Letter dated 28 February 2000 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*. 29 Feb.2000 (A/55/56-S/2000/160).

<sup>74</sup> UN General Assembly, 57<sup>th</sup> Session. *Letter dated 12 March 2002 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*. 20 March 2002 (A/57/59):2.

<sup>75</sup> UN General Assembly, 61<sup>st</sup> Session. *Letter dated 16 August 2006 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General*. 28 Aug. 2006 (A/61/293).

<sup>76</sup> This committee was established by the UN Security Council Committee pursuant to Security Council Resolution 1540 (2004) which imposed Chapter VII obligations on all states to develop and enforce legal and regulatory measures to combat the proliferation of weapons of mass destruction to prevent their spread to non-state actors.

aligned movement started off by expressing support for the Mongolian initiative by describing it as a “commendable contribution to regional stability and confidence-building.”<sup>77</sup> In its later documents, the movement was the first to stress the significance of this measure in strengthening the non-proliferation regime. In the final documents of the NAM’s summit conferences in 2006 and 2009, both Mongolia’s nuclear-weapon free status and the nuclear-weapon-free zones are noted as *positive steps* and *important measures* towards strengthening global nuclear disarmament and nuclear non-proliferation.<sup>78</sup> The movement has also been supportive of Mongolia’s efforts to institutionalize its nuclear-weapon-free status via a legal instrument.

### ***Cooperation with nuclear-weapon-free zones***

In an important development that further strengthened Mongolia’s nuclear-weapon-free status as an internationally recognized one, Mongolia was invited to take part in the first Conference of the States Parties and Signatories of Treaties that Establish Nuclear-Weapon-Free Zones, held in Mexico in 2005. The Conference expressed, unequivocally, its “recognition and full support of Mongolia’s international nuclear-weapon-free status.”<sup>79</sup> Such conferences have since become an established forum for promoting cooperation and coordination among the nuclear-weapon-free zones, and are now routinely held prior to the NPT Review Conferences as part of the preparatory process. In 2009, Mongolia hosted a meeting of the focal points of nuclear-weapon-free zones to discuss the issues of coordination and cooperation. At the second conference in 2010, Mongolia’s name was officially added to the name of the conference,<sup>80</sup> and its outcome document expressed support for the efforts by Mongolia to institutionalize its nuclear-weapon-free status.

In 2012, the nuclear-weapon-free zones and Mongolia began a preparatory process leading to their next regular conference, and held a preparatory meeting for their third conference, to be convened in 2015, on the margins of the 2015 NPT Review Conference. Mongolia was elected to serve as chairman of that meeting.

Mongolia’s participation in the conferences of nuclear-weapon-free zones as a country with an internationally recognized nuclear-weapon-free status represents the best avenue for Mongolia, not only for further consolidating the international recognition of its status, but also for institutionalizing it within a broad multinational effort by the nuclear-weapon-free zones aimed at promoting their common security, and also for promoting the goals of nuclear non-proliferation and nuclear disarmament. Together with the Central Asian nuclear-weapon-free zone, Mongolia’s nuclear-weapon-free status expands the territory of nuclear-weapon free areas beyond the southern hemisphere and into regions in the northern hemisphere where nuclear

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<sup>77</sup> A/C.1/49/PV.8:5.

<sup>78</sup> UN General Assembly, 61<sup>st</sup> Session. *Letter dated 19 September 2006 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General*. September 29, 2006 (A/61/472-S/2006/780); UN General Assembly, 63<sup>rd</sup> Session. *Letter dated 24 July 2009 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General*. September 14, 2009 (A/63/965-S/2009/514).

<sup>79</sup> UN General Assembly, 66<sup>th</sup> Session. *Letter dated 27 June 2005 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General*. July 14, 2005 (A/60/121):10.

<sup>80</sup> UN General Assembly Resolution 64/52, “Second Conference of States Parties and Signatories to Treaties that Establish Nuclear-Weapon-Free Zones and Mongolia.” January 12, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/464/95/PDF/N0946495.pdf?OpenElement>.

weapons are currently concentrated, have been used, and where non-proliferation has seen a challenge for all to address.

### ***NPT Review Conferences***

The final documents of the 2000 and 2010 NPT Review Conferences have included a provision that *welcomed the declaration by Mongolia* of its nuclear-weapon-free status. In 2000, the NPT Review Conference referred to the Mongolian legislation on the nuclear-weapon-free status as a unilateral measure to ensure the total absence of nuclear weapons on Mongolian territory, as a concrete contribution to promoting the aims of nuclear non-proliferation, and as a practical contribution to promoting stability and predictability in the region. In 2010, it expressed support for the measures taken by Mongolia to strengthen this status. As in any documents related to Mongolia's status which involve the participation of the nuclear-weapon states, the documents of the NPT Review conferences have refrained from mentioning the "institutionalization" of the Mongolian status. But the mere fact that the case of Mongolia found its way into the Final Documents of the NPT Review Conferences is a recognition of its unique status.

### ***ASEAN Regional Forum***

In the Asia-Pacific region, the ASEAN Regional Forum has expressed support for Mongolia's nuclear-weapon-free status and for the 2000 Joint Statement of the nuclear-weapon states in connection with this status.

The above resolutions, statements and documents issued in connection with Mongolia's nuclear-weapon-free status amply attest to the recognition of Mongolia as a nuclear-weapon-free status by the international community. The UNGA resolutions, support on the part of the nuclear-weapon-free zones, the nuclear-weapon states, and the non-aligned movement speak to the international legitimacy that this status status has been able to gain over the years.

In the past years, the efforts to achieve a formal institutionalization of this status, through a legally binding treaty or through a normative acceptance of the international concept of a single-state nuclear-weapon-free zone, have encountered quiet but firm resistance from of the nuclear-weapon states. This outcome should not diminish, let alone undermine, the fact that—as a result of the body of international, multilateral, bilateral and national documents and statements described above—Mongolia possesses a *bona fide* internationally recognized nuclear-weapon-free status that aligns itself with the goals of nuclear non-proliferation and nuclear disarmament pursued by the nuclear-weapon-free zones.

## **THE WAY FORWARD**

The way forward for Mongolia to strengthen its status will require, as lately stated by Mongolia, further coordination with the nuclear-weapon states in relation to its latest two-pronged proposal seeking (a) a *reformulation* of their Joint Statement of 2000 in such a way as to explicitly welcome Mongolia's its nuclear-weapon-free status (and not the declaration thereof), and (b) *assurances* on their part not to contribute to any act that would violate Mongolia's

nuclear-weapon-free status. This latter proposal, however, may prove to be a repeat of the “institutionalization” project, but Mongolia has already begun pursuing it.

For the longer term, what Mongolia should strive to do is build on the cooperation it has established with the nuclear-weapon-free zones, and enhance this cooperation in order to both further consolidate the country’s status as a nuclear-weapon-free country and to contribute to strengthening the positive role the nuclear-weapon-free countries have on the global nuclear debate.

Since this paper argues that Mongolia does have an internationally recognized nuclear-weapon-free status, *recognition* by the nuclear-weapon states would entail, technically speaking, addressing Mongolia’s frustration with the fact that these countries have failed to cooperate with Mongolia in strengthening their Joint Statement by agreeing to *welcome its nuclear-weapon-free status* instead of *welcoming the declaration of that status*. This position could be corrected by consolidating the positions expressed by individual nuclear-weapon states, such as Russia and the U.S., into a joint statement which, while referencing Mongolia’s unique geographic location, would recognize its nuclear-weapon-free status as a concrete contribution to nuclear non-proliferation and to peace and stability in the region. As a party in good standing to the NPT, with impeccable non-proliferation and compliance credentials, Mongolia has stated on a number of occasions that, besides serving its own security interests, its status is also meant to advance non-proliferation goals. Such an approach by the nuclear-weapon states could be conducive to remedying the present flaw in the biennial UNGA resolutions on *Mongolia’s international security and its nuclear-weapon-free status*, which fail to emphasize and recognize the non-proliferation value of Mongolia’s nuclear-weapon-free status.

It might be more difficult for Mongolia to obtain the literal assurance from the nuclear-weapon states *not to contribute to any act that would violate its nuclear-weapon-free status* since the language of such an assurance replicates that of protocols to the treaties on the formal nuclear-weapon-free zones. But since Mongolia has stated explicitly that it would not be seeking negative security assurances for itself (which should not mean abandoning its support for a universal instrument extending such assurances for non-nuclear-weapon states), an assurance not to contribute to any act that violates its status could entail, among other things, seeking respect for the Mongolian law on its nuclear-weapon-free status. Russia and China, for example, have already pledged in respective treaties with Mongolia to respect Mongolia’s policy of not permitting the deployment on and transit through its territory of foreign troops, nuclear materials, and other weapons of mass destruction.

The United States could go further and restate its strengthened negative security assurances contained in the 2010 Nuclear Posture Review, to the effect that the United States “will not use or threaten to use nuclear weapons against non-nuclear-weapon states that are party to the NPT and in compliance with their nuclear non-proliferation obligations.”<sup>81</sup> The United States has also spoken of its willingness to consult with countries individually on the issue of

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<sup>81</sup> US Department of Defense, “Nuclear Posture Review Report.” April 2010, <http://www.defense.gov/npr/docs/2010%20nuclear%20posture%20review%20report.pdf>.

assurances, even if it is not ready for a binding international instrument on security assurances.<sup>82</sup> China has stated that its unconditional security assurances did apply to Mongolia as well.<sup>83</sup> As for Russia, it has expressed support for a global agreement on security assurances, with a caveat that due account should be taken of the provisions of Russia's military doctrine.<sup>84</sup> This doctrine does specify possible uses of nuclear weapons, but is not specific on security assurances. The challenge for Mongolia will be to coordinate with the nuclear-weapon states in such a way as to harmonize their individual positions in a consensus approach. It should be noted here, however, that—in an age when accident or poor judgment, a nuclear weapon in the hands of terrorists, or some other proliferator present a greater nuclear threat than an all-out nuclear war waged by nuclear-weapon states—the mantra that the only guarantee against the use or threat of use of nuclear weapons is their total elimination remains as valid as ever.

At present, the most pragmatic approach for Mongolia will be to strengthen its cooperation with the formal nuclear-weapon-free zones, building on its existing accomplishments in this regard. All nuclear-weapon-free zones have not only fully recognized Mongolia as a nuclear-weapon-free state but also have welcomed it into their ranks. Mongolia's participation in their conferences not only raises Mongolia's profile as a nuclear-weapon-free state, but also presents it with an opportunity to learn from the existing zones' experiences and to contribute to the debate within this framework, on regional confidence-building measures, the zones' relationship with the NPT review process, and cooperation with civil society. Cooperation and coordination with the nuclear-weapon-free zones also present Mongolia with a broader forum wherein it should be able to promote shared goals of nuclear disarmament and nuclear-non-proliferation, and a world free of nuclear weapons.

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<sup>82</sup> Statement by the US at the Conference on Disarmament. Geneva. February 10, 2011, [http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/20770A1B2258674CC12578340033E792/\\$file/1204\\_US.pdf](http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/20770A1B2258674CC12578340033E792/$file/1204_US.pdf).

<sup>83</sup> A/CN.10/195: 3

<sup>84</sup> Intervention by Russia at the First Session of the Preparatory Committee for the 2012 NPT Review Conference. Vienna. February 1, 2012, [http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/ABFAECE330476C07C125782A0050B422/\\$file/1201\\_RF.pdf](http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/ABFAECE330476C07C125782A0050B422/$file/1201_RF.pdf).