TEST BAN VERIFICATION MATTERS

Finalising the CTBT

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TEST BAN VERIFICATION MATTERS: Finalising the CTBT


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The CTBT negotiations: January 1994 — June 1996

Summary

Negotiations on a comprehensive test ban treaty (CTBT) opened in the Conference on Disarmament (CD) in January 1994, chaired by Miguel Marin Bosch of Mexico, who bequeathed an initial rolling text of 93 pages. Ludwik Dembinski of Poland took over the Chair in January 1995, in a year which saw substantial progress on verification but little movement on the central political issues until August, when the United States (US) and France dramatically pledged themselves to zero yield. When Jaap Ramaker of the Netherlands took over in January 1996, he inherited a revised rolling text, with more than 1200 brackets around disputed text or options.

In February, Iran and Australia submitted draft or “model” treaty texts, which demonstrated areas of agreement and showed how the mass of brackets could be pared away. While differing in the detail of their solutions, the Iranian and Australian texts approached many of the outstanding problems in similar ways. They thus hacked a path to enable Ambassador Ramaker to put down a Chair’s text. Because of strong opposition to any “premature” attempt to circumvent the rolling text, expressed by India, Pakistan and China (with milder but significant objections from Russia), Ambassador Ramaker chose to pull the text together in two stages. At the end of March he therefore tabled an “Outline of a draft Comprehensive Nuclear Test Ban Treaty” to “assist states...in preparing for the final stage”. This outline consisted of a preamble and 17 articles, but included in brackets considerable sections of the rolling text, including China’s proposals on peaceful nuclear explosions (PNEs), peaceful use of nuclear energy, security assurances and the relation to other international agreements.

On 28 May, Ambassador Ramaker presented a complete “Draft Comprehensive Nuclear Test Ban Treaty”, consisting of a preamble and 17 articles with no brackets. To this were attached various annexes and protocols covering the treaty’s verification. On 24 June he provided a further working paper containing amendments to his 28 May text.

On 28 June, the last day of the second part of the 1996 session, Ambassador Ramaker tabled a revised draft treaty. In view of the lateness of the session, he did not seek endorsement of his Chair’s text, nor even a decision to accept it in principle, but requested CD delegations to ensure that they and their governments study it during the intersessional period. In order to finalise the text in time to ready it for signature in September, as mandated by the UN General Assembly, it would need to be agreed by early August, leaving little time for further negotiations if any state wants substantial changes. The Chair’s draft text from WP.330/Rev.1 is analysed below.

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1 CD/NTB/WP.321
2 CD/NTB/WP.330
3 CD/NTB/WP.335
4 CD/NTB/WP.330/Rev.1

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Treaty Articles as of 28 June

Scope

The basic obligations in Article I of the CTBT are taken from the most widely supported option in the rolling text, which had been originally proposed by Australia in March 1995:

"1. Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.

2. Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion."

With the "zero yield" understanding that this prohibits low yield explosive testing and hydronuclear experiments, this scope formulation has now received the backing of all the five declared nuclear weapon states, as well as the majority of non-nuclear weapon countries. As far as the nuclear weapon states are concerned, it does not apply to sub-critical tests and laboratory experiments that do not involve a release of fission energy, but this is disputed by many non-aligned and non-nuclear weapon countries. China's agreement came late in the day, as it finally recognised the futility of maintaining its lone insistence that peaceful nuclear explosions (PNEs) be permitted.

Egypt has continued to support the proposal put forward by Indonesia in June 1995, that the word "explosion" should be deleted from the first part so that the treaty would ban all nuclear weapon tests and any nuclear explosion. For a while during the past month, Egypt was joined by Iran, Ethiopia, Kenya and Nigeria in pushing for this tightening of the scope. Faced with complete rejection from the Permanent Five UN Security Council Members (P-5) and resistance from other countries, including Indonesia, on grounds that such a scope could not command consensus and that persisting with it could jeopardise the treaty, these countries are expected to agree to Ambassador Ramaker's scope text after making their point on nuclear testing per se.

India continues to want the treaty to ban all nuclear testing, clinging to its proposal to prohibit "any release of nuclear energy caused by the rapid assembly or compression of fissile or fusion material by chemical explosive or other means." However, India has no hope now of re-opening agreement on scope.
Peaceful Nuclear Explosions

China's demand for PNEs finally caved in, having failed to find a single backer (though Russia and Iran offered behind-the-scenes support). After indicating in May that it would be "flexible", China proposed that Article II of the treaty should "notwithstanding the provisions of Article I", offer the possibility of permitting PNEs, providing that a Review Conference of states parties agreed to this by consensus. Such an article was unacceptable to the majority of delegations, who feared that this would raise ambiguities about the scope prohibition. Canada put forward an alternative paragraph, softening China's proposal and inserting it under Article VIII, the section on review of the treaty. This underwent a further transformation before being finalised as paragraph 1 of Article VIII in the Chair's draft, which China is understood to be willing to accept:

"Unless otherwise decided by a majority of the States Parties, ten years after the entry into force of this Treaty a Conference of the States Parties shall be held to review the operation and effectiveness of this Treaty, with a view to assuring itself that the objectives and purposes in the Preamble and the provisions of the Treaty are being realised. Such review shall take into account any new scientific and technological developments relevant to this Treaty. On the basis of a request by any State Party, the Review Conference shall consider the possibility of permitting the conduct of underground nuclear explosions for peaceful purposes. If the Review Conference decides by consensus that such nuclear explosions may be permitted, it shall commence work without delay, with a view to recommending to States Parties an appropriate amendment to this Treaty that shall preclude any military benefits of such nuclear explosions. Any such proposed amendment shall be communicated to the Directory-General by any State Party and shall be dealt with in accordance with the provision of Article VII."

Reversing the prohibition clearly described in Article 1 on scope would thus require a request from a state party to place the issue on the review conference agenda, then agreement at the review conference and further consensus at a subsequent amendment conference which would have to approve an amendment and proposals for the conduct of a nuclear explosion ensuring that no-one could gain any military benefit. While many states regard even this provision as otiose, it is likely to be accepted as a "face-saver" since China has insisted that it must have some reference to PNEs in the treaty in return for giving them up. Since the legal position would be that PNEs are banned unless the treaty is amended, this review provision should not be regarded as a justification for any research programmes carried out by nuclear weapon laboratories with a view to circumventing the CTBT's intentions under the guise of PNEs.
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Preamble

Ambassador Ramaker’s treaty preamble changed little from his first draft, although the G-21 had made a last ditch, unsuccessful attempt to strengthen the treaty’s objectives in this section. The repository of a treaty’s political aspirations, the preamble may become the display case for concepts that underpin the treaty, a storage site for ideas that were dropped from the body of the text or a bland assertion of general principles that offend no-one. With the three western nuclear weapon states rejecting anything stronger, Ambassador Ramaker chose to make it the latter.

In view of its original purpose, the non-aligned countries wanted the CTBT preamble to commit the parties to the concept of a time-table for nuclear disarmament and reflect the treaty’s role in curbing vertical proliferation. In the penultimate week, the G-21 began negotiating to find common language for the preamble that they could push for together. Co-ordinated by Mexico, amendment proposals were submitted by 13 countries: Brazil, Cuba, Indonesia, Iran, Kenya, Mexico, Myanmar, Mongolia, Nigeria, Pakistan, Peru, Sri Lanka and Venezuela submitted an amendment proposal on the preamble with paragraphs recognising:

“...that a Comprehensive Nuclear Test Ban Treaty should end the development and qualitative improvement of nuclear weapons, thereby constituting an effective measure of nuclear disarmament and non-proliferation in all its aspects... [and] ...that an end to all nuclear weapon tests explosions and all other nuclear explosions is an indispensable step towards the larger goal of a nuclear weapon free world and should be complemented by negotiations, to be conducted on a high priority basis, on a comprehensive phased programme with agreed time-frames for the complete elimination of nuclear weapons and their means of delivery at the earliest possible time”.

A further paragraph referred to the aspirations of the 1963 PTBT, including ending environmental contamination by radioactive substances. While not including Pakistan’s separate section on purposes and objectives, the statement put the preamble into this context with a final paragraph committing to the “achievement of the above mentioned purposes and objectives.”

India, which had earlier submitted its own language on ending qualitative development and calling for the total elimination of nuclear weapons within a “time-bound framework”, refused to negotiate with its non-aligned colleagues on a joint proposal. This weakened the bargaining power of the G-21 states and played into the hands of the western nuclear weapon states who made it clear that they would not negotiate on strengthening the preamble unless India gave a commitment to sign the treaty.

Rejecting any mention of curbing nuclear weapon development as an objective or aspiration of the treaty, France, the United Kingdom (UK) and the US were prepared to allow the preamble to refer to “constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of
nuclear weapons” as a consequence of the treaty. They would also accept a preambular paragraph recognizing a CTBT as “a meaningful step in the realisation of a systematic process to achieve nuclear disarmament.” With Cuba pushing hard to include mention of the environment and France continuing to oppose references linking nuclear testing to environmental harm (reportedly afraid that such linkage could make it possible for the nuclear weapon states to be sued), the revised treaty text merely noted “the views expressed that this Treaty could contribute to the protection of the environment.”

Elsewhere the preamble welcomes recent arms reduction measures and underlines the importance of their implementation and of further measures towards nuclear disarmament. Utilising language agreed in the decisions on Principles and Objectives at the Non-Proliferation Treaty Review and Extension Conference in May 1995, the preamble stresses the need for “continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control.” It reiterates the NTB Committee’s mandate for a “universal and internationally and effectively verifiable comprehensive nuclear test ban treaty” and affirms its “purpose of attracting the adherence of all states to this treaty and its objective to contribute effectively to the prevention of the proliferation of nuclear weapons in all its aspects, to the process of nuclear disarmament and therefore to the enhancement of international peace and security.”

The CTBT Organisation

The revised treaty text made few changes to the sections relating to the Comprehensive Test Ban Treaty Organization (CTBTO), which would be established in Vienna. This will comprise a Conference of States Parties, expected to meet annually, an Executive Council and a Technical Secretariat, headed by a Director-General. The CTBTO will be an independent body, but can “seek to utilise expertise and facilities, as appropriate, and to maximise cost efficiencies, through co-operative arrangements with other international organisations such as the International Atomic Energy Agency.”

Following pressure from African and European states, Ambassador Ramaker decided to increase the membership of the Executive Council from the 45 originally proposed, keeping the six regions but adding one seat to each region’s allocation, thus: 10 to Africa, 7 to Eastern Europe, 9 to Latin America, 7 to the Middle East and South Asia, 10 to North America and Western Europe, and 8 to South-East Asia, the Pacific and the Far East.

Although some African states continued to complain that they were under-represented, and Nigeria again argued for the allocation to be based on the UN’s five regions instead, it is likely that this will be the final say on the composition of the Council. The conditions for seat allocation remain much the same as in the previous draft, with one third to be filled taking into account particular criteria, one seat per region allocated by
alphabetical rotation (to ensure that no-one is excluded), and the rest designated from among the states parties in each region by rotation or election.

In the section to be filled according to certain criteria, Ambassador Ramaker has bowed to Pakistan's objections and removed the reference to nuclear capabilities as determined by the International Atomic Energy Agency (IAEA). Instead, political and security interests are to be taken into account, alongside "nuclear capabilities relevant to the treaty as determined by international data", IMS facilities, expertise and experience in monitoring and states parties' budgetary contribution to the CTBTO. This formula was designed to provide equitable regional participation, ensure that no state is permanently excluded, and give states which regard themselves as major players the assurance of continuous seats on the Council, while avoiding the political overtones of providing "permanent" seats to the nuclear weapon states or others.

While the Conference of States Parties is the principal body, the Executive Council will have the greatest political role in decisionmaking. With the exceptions of permitting or preventing an on-site inspection from being launched, the Council would take decisions on matters of substance by a two-thirds majority of its 51 members, and matters of procedure by a simple majority of the members. Its powers and functions are almost unchanged between Ambassador Ramaker's first draft and this treaty text. However, reference in the earlier draft to considering "apparently imminent non-compliance" with the treaty is now merely "possible non-compliance."

When Germany dropped its requirement for including "preparing" to test in the scope, it had pushed for consideration of imminent non-compliance elsewhere in the treaty, supported by Sweden and several non-aligned countries, including Indonesia. However, the nuclear weapon states argued that this might be used to interfere with some of their non-prohibited activities at the test sites and could cause compliance ambiguities. Faced with their opposition, Ambassador Ramaker has left direct reference to imminent non-compliance out of the treaty, although it may still be possible to raise questions under the provisions for consultation and clarification about activities which cause suspicion prior to a treaty violation being committed.

Verification

With the exception of the monitoring stations withdrawn by India, the verification regime has remain little changed from Ambassador Ramaker’s earlier draft. It would consist of an international monitoring system (IMS) of four basic technologies, non-mandatory consultation and clarification, on-site inspections, and confidence-building measures.

As far as the IMS is concerned, there is agreement on the number and location of stations providing global networks of seismic, radionuclide, infrasound and hydroacoustic monitors. Despite India's withdrawal of a primary and auxiliary seismic station and a radionuclide monitoring station, Ambassador Ramaker has kept the
numbers the same, with India's replacement to be determined if New Delhi persists in its policy of non-cooperation.

The IMS would comprise 50 primary and 120 auxiliary seismic stations, a network of 11 hydroacoustic monitors, 60 infrasound stations and a network of 80 stations for measuring radionuclides in the atmosphere.

Despite strong opposition from China, Ambassador Ramaker has included noble gas monitoring. The draft requires 40 of the 80 stations for measuring radioactive particles in the atmosphere to monitor for the presence of relevant noble gases as well. Most countries with an opinion on the matter support this on grounds that noble gas monitoring would enhance the deterrence and detection capabilities of the system. The venting of gases such as xenon and argon are indicative of a nuclear explosion and cannot be completely or confidently contained even if a test is carefully concealed.

Ambassador Ramaker has omitted electromagnetic pulse (EMP) and satellites, which China wanted, but has included provisions for "improvement of the verification regime", allowing EMP, satellites or other technology to be incorporated in the IMS subject to the consensus of the Executive Council. In this manner, technologies can be either added or deleted from the IMS without requiring the full process of an Amendment Conference. It would also be possible, under separately established "cooperative arrangements" for any state party to make available supplementary data from national monitoring stations that are not formally part of the IMS, although it appears that this only applies to the IMS-type technologies.

The International Data Centre (IDC), attached to the Technical Secretariat, would be responsible for processing the mass of raw data from the IMS stations and sending it to states parties in a variety of forms. The controversy over how much the IDC should analyse the data as part of its regular bulletin to states parties was decided by Ambassador Ramaker in favour of "an enhanced option 2" of the Friend of the Chair's working paper (CD/NTB/WP.312). The revised draft text confirms the likely acceptance that the IDC would screen data in accordance with internationally standardised criteria established by the CTBTO, filter it according to nationally requested criteria, and provide some additional technical assistance to states parties.

On IMS funding, Ambassador Ramaker has decided that unless the responsible state meets the costs itself, the CTBTO would pay for establishing new facilities identified as necessary for the primary networks, upgrading existing primary or auxiliary facilities to the international standards, operating and maintaining primary IMS facilities, transmitting IMS data, both processed and raw, analysing samples and authenticating data from auxiliary stations. Providing a modified version of the US proposal for "contribution credits", the Chair's text allows a state party to offset its costs on establishing and operating its stations against its assessed financial contribution, up to half its annual financial liability. Overall, the costs of the CTBTO will be met by all states parties in accordance with the UN scale of assessments adjusted to take account of the difference in membership of the two organisations.
Confidence-building measures relate to voluntary notification of chemical explosions and calibration of the IMS stations, but do not encompass any transparency or measures relating to the existing test sites, as some G-21 countries had hoped.

Consultation and clarification, identified by Ambassador Ramaker as an essential component of the verification regime, has not been made mandatory, as wanted by Israel, India, China and others. States have the right (but not the obligation) to seek clarification and attempt to resolve, either among themselves or through the CTBTO “any matter which may cause concern about possible non-compliance with this treaty.” A state party may request assistance from the CTBTO and be provided with information from the Technical Secretariat. The party to whom the request is directed is obliged to provide clarification within 24 hours and can be pursued for additional explanations if the initial information is deemed inadequate. Consultation and clarification should also be sought immediately if any request for an on-site inspection is received. Although time-lines are provided so that results of this exchange of information can inform the OSI decision process, conclusion of the clarification process is not obligatory.

On-Site Inspections

During the past month on-site inspections (OSI) have occupied considerable time in bilateral, P-5 and multilateral negotiations. Although some movement was reported, positions remained polarised between the United States, backed by the (UK) and France, which wants an unrestricted regime as possible, including the right to use any kind of national as well as international sources of information, and China, backed by Pakistan and India, which wants greater controls and restrictions to prevent “abuse” and espionage. The P-5 had been attempting to resolve several issues of contention among them as a “package”, including PNEs, satellites, EMP and noble gas monitoring, equal transparency at the test sites, and entry into force.

More than any other issue, irreconcilable differences on inspection procedures and the use of national technical means (NTM) blocked agreement, even though the United States was prepared to sacrifice its better judgement on entry into force in return for stronger support from the UK, and greater concessions from China and Russia on inspections.

For the US, the issue pertains not only to the effectiveness of the treaty’s verification regime, but to Senate ratification of the treaty. In this, the Clinton administration is vulnerable to inter-agency struggles, and those in the intelligence and military agencies who opposed a test ban treaty. However, for China, Russia, India, Israel and Pakistan, this is a fundamental question of national security, and they want to ensure that any inspection would be a very rare and circumscribed occurrence. For the US, the best way to ensure rare or zero inspections is to have an effective and deterrent verification regime so that no state attempts to do anything that might be construed as suspicious within the terms of the treaty. The others, however, want to ensure that all states would
be monitored to the same degree, raising concerns that, as the most technologically advanced, the United States could have an advantage both for evading detection and for accusing others. As negotiations among the protagonists continued to go round in circles, Ambassador Ramaker has chosen to make few alterations to the delicate balance of rights and responsibilities contained in his first draft.

The Chair’s draft text allows any relevant kind of information, including national technical means, but “consistent with generally recognised principles of international law”, understood to exclude espionage. However, before the inspection can go ahead, the Executive Council must decide by a “majority of all members” (the so-called green light). The United States continues to argue that this is too stringent. They had favoured a process whereby a requested inspection went ahead automatically unless countermanded by the Executive Council (‘red light’). Though recognising now that this is not obtainable, the US is holding out for a simple majority decision by those members of the Council who are present and voting. However, Pakistan and China have so far been unwilling to accept a simple majority, arguing that they have already dropped their requirement from three-fourths. Underscoring China’s insistence on a two-thirds majority of the 51 members, Sha stated on 6 June that “the launching of OSI can only be considered as a substantive issue in the Council.” Although the P-5, special consultations and the Nuclear Test Ban Committee considered various alternatives such as two-thirds of Council members which are present and voting, no agreement was reached. Ambassador Ramaker’s confirmation in WP.330/Rev.1 of the simple majority voting formula suggests that this is the best compromise, providing a stricter filter than the US hoped for but less stringent than China wanted.

Some delegations had been concerned that requiring a positive decision of the Executive Council to permit an inspection could be abused for purposes of delay so that time-critical evidence could be dispersed or erased. The Chair’s text deals with this by providing a practical but strict time-line for the various stages between an OSI request and arrival at the site to be inspected, so that the time taken must not exceed one week. Although he has not recommended specific inspection phases, as proposed by the United States, Ambassador Ramaker has introduced the provision that once an inspection is initiated, it can only be halted by a majority decision of the Council, or by recommendation of the inspection team (unless countermanded by the Council). However, if drilling is to be conducted, a further decision of the Council must be sought (‘green light’).

Intrusion and effectiveness have been balanced with overflight provisions and managed access, although the precise conditions have been strongly contested by Russia and Israel, both of whom want to ensure that they could protect sensitive facilities from prying eyes.

The envisaged time-frame for an inspection is 60 days, with the possibility of extending by up to 70 days, subject to majority decision of the Executive Council. Provisions covering the conduct of inspections aim to diminish the opportunity for abuse while ensuring that the inspection team is not prevented from carrying out its mandate by undue delays and impediments thrown up by an inspected state. States are allowed to protect sensitive facilities and information unrelated to compliance with the treaty. The
inspection should move from less intrusive to more intrusive procedures. Inspectors and access points have to be identified to the CTBTO within 30 days of the treaty's entry into force for it (and updated as appropriate). Consideration has been given to inspections where the site under one state's jurisdiction or control is on the territory of another state (as with US bases in Europe or Japan). During an inspection, personnel are granted privileges and immunities consistent with diplomatic status, and up to three observers from the requesting party or parties may accompany the team, subject to the inspected party's agreement of the personnel.

The draft treaty also includes penalties if the Executive Council deems a request to have been "frivolous or abusive." This may be financial (requiring the requesting state party to bear the costs incurred) or any of the measures in Article V, which covers the redressing of a situation, compliance and sanctions. Accordingly, failure to comply with treaty obligations or abuse of the treaty's provisions can result in penalties ranging from suspension of membership rights, collective measures in conformity with international law, and the taking of cases of "particular gravity" to the United Nations. The earlier specific mention of the UN General Assembly and Security Council have been left out, as several states had raised concerns about the potential for bias and possible use of veto because of the permanent representation of the declared nuclear weapon states in the UN Security Council.

Review Of The Treaty

Article VIII on review of the treaty has caused considerable debate during the final stages of the negotiations. Acting as moderator on this issue, Ambassador Mounir Zahran of Egypt managed to win consensus for language enabling the ten year review to include "the objectives and purposes in the preamble and the provisions of the treaty..." as desired by India, Pakistan and others. As discussed above, the review is also charged with taking into account any new and relevant scientific and technological developments. A state party can request that PNEs be addressed, but this is not automatically on the agenda of a future review conference as China had originally wanted.

Entry Into Force

Agreeing on the conditions to be met before the CTBT becomes fully legally binding has become the most difficult issue to resolve. Russia, supported by the UK, Pakistan and Egypt, is adamant in requiring that all states with the capability to conduct a nuclear test should have signed and ratified the treaty before it enters into force.

Very early on in the negotiations, Russia proposed that the condition for the treaty coming into effect should be ratification by all 68 countries on the IAEA list of those
who have or have had nuclear power or research facilities. At that time, the UK and France favoured the “expanded CD” of 61 states. Both lists were simply ways to include the P-5 and the undeclared nuclear weapon countries, India, Israel and Pakistan, without identifying them explicitly or giving them special status. When it appeared that the CD would not expand, the UK, France and China came to support Russia’s position. The United States, which feared that such a list was too large and could delay entry into force, favoured ratification by 40 states including the P-5. While the US wanted all the nuclear weapon capable countries on board, it had decided against making accession by the threshold states a condition, partly to avoid conferring veto power and special status, but most importantly because it wanted the treaty to take effect as soon as practical and considered a smaller number more likely to accomplish this.

With negotiations on entry into force deadlocked during May, Ambassador Ramaker inserted as a “holding article” in his first draft text a proposal from the UK which had not been negotiated. According to this, the treaty could enter into force on ratification by 37 countries listed as providing primary seismic stations and/or radionuclide laboratories to the IMS. The absurdity of such a transparent ploy to bind the eight became clear when two more countries added stations to the lists and India, denouncing the pressure that was being exerted by the P-5 to make it accede to the CTBT, announced that it would withdraw its seismic stations —and promptly did so.

With India’s early signature on the treaty looking less and less likely, Ambassador Ramaker sought a formula that would appease the hard-liners such as Russia and the UK. On 20 June, just after India’s declaration that it would “not accept any language in the treaty text which would affect our sovereign right to decide, in the light of our supreme national interest whether we should or should not accede to such a treaty”, Ambassador Ramaker issued a working paper on entry into force with a very complicated procedure.

Essentially it provided two entry into force provisions. If the stringent list condition could not be met within five years, then states which had ratified would have a second chance to bring the treaty into effect by a combination of a simple number, waiver conference and “deferment” option. The condition based on the states with seismic and radionuclide stations would stand for five years after the treaty was opened for signature. If the condition had not been met during that time, but at least 75 states had signed and ratified, then the treaty would enter into force automatically five years plus 180 days from the date of its opening for signature, unless one or more of the states which had ratified requests a special conference to be convened. If a conference is requested, then this would be open to all states which had fully ratified, and they would have the power to agree to implement the treaty by a two-thirds majority. In recognition of the particular concerns put forward by Pakistan and Egypt, WP.334 proposes that any state which had ratified but did not support the decision to implement the treaty could, at the time of the conference, defer entry into force of the treaty for it until all the original conditions had been met or it revokes its decision to defer.

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5 CD/NTB/WP.334
This complicated proposal was forced on the Chair because of the intransigence of Russia, the UK, Pakistan and China on the one hand, and India's threatened refusal to sign on the other. The US, though among those who disliked the condition imposed by Russia et al, was prepared to bargain the “five plus three” condition in return for what it wanted on inspections, but it failed to rally opposition to the hostage-taking formula and even — briefly — gave it reluctant backing. Failing to agree the P-5 package, the US shifted again, publicly opposing the list of 37 as India withdrew its IMS stations. However Russia and the UK continued to dig their heels in, refusing to contemplate any kind of waiver provision and making a mockery of the late night sessions of the NTB Committee that attempted to resolve the differences. By this time France, the US and the majority of other states wanted a more flexible provision that would not allow India or any other listed country to take the treaty hostage and delay implementation indefinitely, but even confronted with an offer that would give them five years to make their proposal work, the UK and Russia refused to move.

While there is greater understanding of Pakistan's interest in this provision, it is the intransigence of the Russia and the UK which has caused the deepest political problems, giving rise to speculation that they were using India's sari to cover their own motives with regard either to the CTBT or to the Clinton Administration's pledge to conclude it successfully. Russia's anger about the zero yield decision taken by Clinton in August 1995 is recognised as a factor in several difficulties thrown up by Moscow since then, including its demand for closer monitoring of Nevada and Lop Nor and its elevation of the accession of all the nuclear test capable states into a treaty breaking issue. Similarly, the current British Foreign Secretary campaigned very hard (and unsuccessfully) in 1992 and 1993, when he was Defence Secretary, to overturn the US testing moratorium which had severely curtailed British testing plans, establishing in the course of his endeavours very close relations with anti-CTBT factions within the US defence and intelligence agencies.

For logistical reasons, as well as India's withdrawal of its stations, the provision in Ambassador Ramaker's first draft (WP.330) was dead. Many states were returning to the view that the newly expanded CD combined with a waiver provision could provide a condition that would facilitate early implementation, while exerting political pressure on the test-capable states. However, the US considered 60 too large and Russia and the UK continued to oppose any kind of waiver, so Ambassador Ramaker resurrected an idea originally floated some months ago by Canada, for a “political conference.” In summary, the revised Chair's draft would make entry into force conditional on ratification by a particular list of 44 states. If this condition is not met within the first three years, then states which had already ratified can convene a conference to “decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of this treaty.”

The 44 countries comprise those which were participating members of the CD on 18 June 1996 and which were also listed by the IAEA’s 1995 and 1996 schedules of nuclear power reactors in the world: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, DPRK, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Mexico,
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Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russia, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, USA, Viet Nam, Zaire. This list was intentionally conceived to prevent ambiguity by clearly omitting Yugoslavia (still on the roll as a CD member but barred from participation) and Iraq. There is presently some question, however, as to whether it should have included Venezuela, bringing the number to 45 states.

Immediately after the revised treaty text had been tabled on 28 June it was clear that some states were confused about the powers of this conference and whether, among the measures it could consider, was the power to waive the condition listing the 44 countries. However, it appears that the drafters intended to rule out the waiver possibility, although states which had ratified could decide on provisional application of the treaty. While provisional application could provide an interim solution, enabling the CTBTO and IMS to be put in place and funded, serious problems could arise if a suspected explosion were detected, requiring a decision to launch an on-site inspection.

If this is to be the provision in the final treaty it will no doubt be cleaned of any confusion. Although most states will be wary of re-opening negotiations, there is a possibility that of all the articles in WP.330/Rev.1 this could be worked on again, for the sake of providing conditions that would not leave the CTBT so vulnerable to being stuck in indefinitely prolonged limbo.

Duration and Withdrawal

The CTBT is envisaged to be of unlimited duration, but provides the standard clause enabling a state party, in “exercising its national sovereignty”, to withdraw if it decides that “extraordinary events related to the subject matter of this treaty have jeopardised its supreme interests.” France, Russia, the US and UK (the P-4) have all stated for the record that fears about the safety and reliability of their nuclear weapon stockpiles could provide such a justification for withdrawal. In general, the supreme national interest provision would only be used in extremis. While not accepting that the link made with the maintenance of nuclear arsenals is appropriate, delegations view the P-4 declarations as required for domestic consumption.

Amendments

Substantive amendments to the treaty would require consensus among all states parties attending an Amendment Conference, but there is a simplified procedure for administrative or technical amendments and a fast-track means for adding or removing stations from the IMS, or otherwise updating verification provisions.
Latest Developments

Jaap Ramaker, Chair of the Nuclear Test Ban (NTB) Committee, presented his revised text at 4.30 pm on Friday, 28 June, recommending that governments study the draft treaty during July, when the CD is in recess, with the intention of returning on 29 July to finalise their agreement. The Netherlands Ambassador therefore met the CD’s self-imposed deadline for a clean text, although some delegations had clearly expected a decision on its acceptance, at least in principle. This was not attempted, as the final weeks of intensive negotiations had revealed wide chasms between the positions of some of the key states.

Though Ambassador Ramaker spoke of conclusion of the negotiations, several states underlined that this may mark the end of a particular phase of negotiations, but it cannot be regarded as the end of negotiations altogether.

Twenty-nine non-aligned delegations issued a statement regretting the lack of a consensus draft treaty and committing to continue negotiations when states come back in July. India reiterated its view that it could not sign the treaty in its present form, but said that it was willing to negotiate further to get a treaty that could command consensus. China noted the “major progress” but said that the CD had been unable to “adopt” the CTBT draft text today “due to divergent positions and other factors including time constraints.” Ambassador Sha Zukang also said that after studying the text, in light of its security interests China would be putting forward amendments to the Chair’s text. Pakistan, Russia and various others also spoke, essentially welcoming the Chair’s efforts, but not accepting that this is the end of the negotiations.

In a month which also saw expansion of CD membership from 38 to 61, negotiations on the CTBT became ever more fraught, with meetings stretching to midnight as the target date for a finalised text drew near. Ambassador Ramaker’s draft text of 28 May, WP.330, had focused attention on three problem areas: preamble, entry into force and on-site inspections.

Though there was no attempt to take a formal decision supplanting the rolling text, the Chair’s first draft became the de facto basis for negotiations in June, just as it is expected that WP.330.Rev 1 will be substantially accepted in states’ capitals. Nevertheless, there are some loose ends and rough edges, and further discussion, bargaining, and possibly arm-twisting may be necessary before the entry into force and on-site inspection provisions can be finalised and agreed.

For most of June, negotiations were conducted in several different kinds of groupings. The declared nuclear weapon states intensified their “P-5” meetings in private, attempting to negotiate a mutually agreeable package on the issues they regarded as most important individually: on-site inspection decisionmaking, including the role of information from national technical means; entry into force; China’s demand for a provision on so-called peaceful nuclear explosions; concerns by Russia regarding equal transparency at the test sites; and whether and how noble gas sensors, satellites and/or electro-magnetic pulse monitoring should be included in the verification regime.
While some discussions continued in the NTB Committee, Ambassador Ramaker also convened around 15 key states to negotiate the most difficult issues under his auspices as Chair. This group included the P-5, the three undeclared nuclear weapon states (India, Israel and Pakistan), and ambassadors from Japan, Mexico, Egypt, Germany, Canada, Indonesia and Australia which had acted as moderators or “friends of the Chair” on the major issues.

In general, however, negotiations on all these levels in Geneva were thwarted by political developments or decisions in key states. Elections in Russia, India and Israel caused policy hardening or confusion that not only affected the negotiating postures of their own delegations, but also prompted (or provided excuses for) an ossification of positions in others, including the UK and several Middle Eastern states. The US expressed a willingness to be flexible on everything except OSI. In this, because of inter-agency conflict and ratification concerns, the US delegation apparently had so little room to manoeuvre that it was prepared to compromise its positions on other important issues in order to win concessions from China and Russia. At this late stage of negotiations, France has proved to be the most flexible of all, being the first to announce its willingness to adopt the Chair’s draft treaty, though stressing that the entry into force provision must be improved. Nevertheless, France has joined the UK in vigorously resisting the non-aligned states’ pressure for stronger commitments to nuclear disarmament in the preamble, which in turn has provided India with both reason and excuse for turning away from the treaty.

Media speculation about India’s intentions came to a head on 20 June, when many expected Ambassador Arundhati Ghose to announce India’s withdrawal from the negotiations. Instead her statement was an ultimatum. Strongly criticising the direction of negotiations, she repeatedly said that India could not sign the treaty unless its concerns were met, referring specifically to a commitment by the nuclear weapon states to end the qualitative improvement of their nuclear weapons and accept at least the concept of a time-table for nuclear disarmament. She indicated that India would not block CD consensus on the treaty (if it were achieved) but warned against attempts to bind India by making its accession a condition of the treaty’s entry into force.

Despite its rhetoric, India appeared unwilling to work with its non-aligned colleagues to strengthen the treaty’s preamble by confronting France, the UK and the US with a co-ordinated proposal. This appeared to confirm the growing view that India is less interested in getting a good treaty than in pandering to a strident sector of domestic opinion that wants India to demonstrate its nuclear capability, thereby maintaining an illusion that India can keep its nuclear options open even if others sign a CTBT. Although 13 countries of the G-21 (Group of Non-Aligned States) managed to unite on a four-paragraph proposal on preambular objectives and aspirations by the last week, they could accomplish little without either India’s engagement or support from moderate western states, who preferred to stay on the side-lines.

The competing requirements of security and verifiability exemplified in the concept of on-site inspections have broken past treaty negotiations and their power to do the same to this CTBT should not be underestimated. Nevertheless, though the US, China and
Russia had been facing off over inspections, the biggest threat to treaty conclusion has become the entry into force provisions.

Attempts in the Chair's 28 May draft to bind India by virtue of a list based on the international monitoring system facilities caused New Delhi to withdraw its seismic and radionuclide stations. As Russia and the UK fronted political manoeuvres by Pakistan, China and Egypt to make the CTBT's implementation absolutely dependent on accession by the eight nuclear test-capable states, India's refusal to sign under such conditions throws up the prospect of a CTBT in indefinite limbo.

Told by the UK's Ambassador Sir Michael Weston during a heated entry into force debate that the treaty only concerns the eight, the other negotiators being there merely to share the financial burden of its verification, Japan has threatened that it would not pay to maintain the Preparatory Commission if implementation of the treaty were unreasonably delayed. Many others, from Mexico to Nigeria, have warned that entry into force conditions should not be used to delay or prevent early implementation of the CTBT, as that would risk the credibility of the treaty which could have dangerous consequences for future security, including further arms control and disarmament initiatives. Ambassador Ramaker, Canada and others have attempted to resolve this issue with different combinations of list, number and waiver/pressure mechanisms, but there is still widespread unease, and it cannot be assumed that the formula in the Chair's 28 June draft is the final word.

Beginning the month with another nuclear test (which may have encompassed more than one detonation), Beijing announced that there would be one more, followed by a moratorium in September. With this, China began to negotiate in earnest, prioritising inspections, indicating flexibility on PNEs, and backing the hard line position of the UK and Russia on entry into force. As China at last gave up on exempting PNEs from the general ban on all nuclear explosions in the treaty's scope, Japan and Canada headed many states' opposition to its attempts at obtaining an Article II commitment to review the issue. Pushed further and further back, it is now likely that the face-saving mention in Ambassador Ramaker's revised draft will go through. As provided in the article on review of the treaty, PNEs would be banned unless this were reviewed and the treaty were amended by consensus.

It is not yet certain that the CD will send an effective treaty to the United Nations for signature in September. Attempts to coerce India backfired and hope is fading that the weak coalition government of H. D. Deve Gowda has either the will or the desire to rescue Nehru's baby from the flames of India's hyped-up media and domestic debate. If big power sticks were counterproductive, there may still be a chance to offer political and economic carrots to India, including meeting its primary concerns with preambular reference to the concept of a time-table or programme to achieve nuclear disarmament and a recognition of the treaty's long sought objective of preventing qualitative development of nuclear weapons. However, none of the P-5 shows signs of engaging with India on these levels. As India withdraws to the side-lines of negotiations, the P-5 response has been to ignore its stated concerns and dismiss attempts by other non-aligned countries which also sought stronger commitments in these areas. If India walks, it is unlikely that Pakistan will sign, regardless of the EIF provisions. Strong
criticisms of the emerging treaty voiced by India and Pakistan have been joined during the past month by Egypt, Iran and Nigeria. The P-5 are no doubt unworried by the prospect of others walking away from the present treaty, but there is a dangerous contradiction in their tactic of ignoring India while at the same time making its accession a binding pre-condition for the treaty’s implementation.

On the positive side, there is now virtually complete acceptance of the scope language, informed by the zero yield decisions. The P-5 have managed to resolve most of their differences regarding verification, and there are signs that all could accept the provisions on this in Ambassador Ramaker’s draft treaty — although there may be some attempt to wring additional concessions before August. China has accepted that PNEs must be banned unless the treaty is amended in the future, thereby removing a major hurdle to final agreement. Constructive positions adopted by Mexico and Indonesia towards the scope, preamble and entry into force provisions have attempted to bridge the gap between draft treaty provisions and non-aligned aspirations, while Cuba and France managed to agree on the merest mention of the environment in the preamble.

A declaration of support for the NTB Chair circulated by Canada was signed by over 20 delegations. However, signatories were mainly western countries which (with a few honourable exceptions) have to all intents and purposes joined the Eastern Europeans on the back benches during this final stage of negotiations, leaving the P-5 and G-21 to slug it out in an unequal contest for the spirit of the treaty. Rather than signing declarations, western countries could have shown more positive support for the Dutch delegation’s attempts to conclude an effective treaty if they had backed the non-aligned states’ more reasonable proposals (some of which were already the policy of certain western states) and been prepared to exert greater pressure to induce recalcitrant members of the Western group, such as the UK, to see reason on potential treaty breakers such as entry into force.

Nevertheless, considerable gains were made this month. A solid and significant treaty text has been tabled by its target date. To meet its obligation to have the treaty ready for signature by heads of state or foreign ministers attending the UN General Assembly mid-September, the CD must now confront its real deadline. The task ahead is pre-eminently political. Decisions on this treaty text must be taken in capitals during the month of July so that the treaty can be finalised, agreed and sent from the CD no later than 16 August 1996.

1996 Session

The first part of the 1996 session ran from 22 January to 29 March. The second part will run from 13 May until 28 June, and the final part from 29 July to 13 September.
## Appendix A — Glossary

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CD</td>
<td>Conference on Disarmament</td>
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<tr>
<td>COP</td>
<td>Conference of Parties</td>
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<td>CTBT</td>
<td>Comprehensive Test Ban Treaty</td>
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<td>CTBTO</td>
<td>Comprehensive Test Ban Treaty Organisation</td>
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<td>EC</td>
<td>Executive Council</td>
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<td>EMP</td>
<td>Electromagnetic Pulse</td>
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<tr>
<td>G-21</td>
<td>Group of 21 (Non-Aligned) States</td>
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<tr>
<td>IAEA</td>
<td>International Atomic Energy Agency</td>
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<td>IDC</td>
<td>International Data Centre</td>
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<td>IMS</td>
<td>International Monitoring System</td>
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<td>NTB</td>
<td>Nuclear Test Ban</td>
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<td>NTM</td>
<td>National Technical Means</td>
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<td>OSI</td>
<td>On-Site Inspections</td>
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<td>P-5</td>
<td>Five permanent members of the UN Security Council</td>
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<td>PNE</td>
<td>Peaceful Nuclear Explosions</td>
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<td>WP</td>
<td>Working Paper</td>
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</table>
Appendix B

Entry into Force — Current Text


1. This Treaty shall enter into force 180 days after the date of the deposit of the instruments of ratification by all States listed in Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.

2. If this Treaty has not entered into force three years after the date of the anniversary of its opening for signature, the Depositary shall convene a Conference of the States that have already deposited their instruments of ratification on the request of the majority of those States. That Conference shall examine the extent to which the requirement set out in paragraph 1 had been met and shall consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of this Treaty.

3. Unless otherwise decided by the Conference referred to in paragraph 2 or other such conferences, this process shall be repeated at subsequent anniversaries of the opening for signature of this Treaty, until its entry into force.

4. All States signatories shall be invited to attend the Conference referred to in paragraph 2 and any subsequent conferences as referred to in paragraph 3, as observers.

5. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the 30th day following the date of deposit of their instruments of ratification or accession.
### Appendix C

**Conference on Disarmament**

**Member States**

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Non-Member States

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Appendix D

States which were participating members of the CD on June 18 1996 and which were also listed by the IAEA's 1995 and 1996 schedules of nuclear power reactors in the world (as in Annex 2 of WP.330/Rev.1 28 June 1996):

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