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A TEST BAN TREATY THAT DOESN'T BAN TESTS?

by Stephen W. Young

On 10 September 1996, a Comprehensive Test Ban Treaty (CTBT) was overwhelmingly endorsed at the United Nations in New York. The Treaty bans all explosive tests of nuclear weapons. A signing ceremony will take place at the United Nations on 24 September 1996. President Clinton, the only head of state known to be attending, will be the first to sign, probably followed by representatives from China and France. One key question remains, however: whether signing the Treaty creates a commitment not to conduct nuclear tests.

Legal Loopholes

The reason for this confusion stems from the vagaries of international law. Once the CTBT has entered into force, any state that has signed and ratified the Treaty is clearly bound not to conduct nuclear tests. However, the current entry into force (EIF) provision requires 44 states, including India, to ratify the Treaty before it takes effect.¹ India has stated clearly that it will not ratify. If it maintains this position, the Treaty may never enter into force. If India's signing is considered vital to the Treaty's purpose, a nuclear-weapon state may interpret India's non-signing as violating that purpose, and seek to use that as justification for renewed testing regardless of whether India tests or not.

In an interview with *BASIC Reports*, George Bunn, an international lawyer and former General Counsel to the US Arms Control and Disarmament Agency, gave his

interpretation of the law, which he holds is the predominant view. The Vienna Convention on the Law of Treaties provides that any state, after signing a treaty, is obliged to refrain from acts which would defeat the object and purpose of that treaty. "The question, then", according to Mr. Bunn, "is what is the purpose of the test ban. If the purpose of the Treaty is to halt this aspect of the nuclear arms race, which, based on the negotiating record, I believe it is, then clearly you cannot test. If, however, this is solely a non-proliferation treaty, then it is not so clear".

As yet neither the UK nor the US Government has decided its view. (Chinese and Russian officials were not available for comment when this issue of *BASIC Reports* went to press). A British official indicated that the UK Government has yet to adopt a formal position. The UK position in the CTBT negotiations in Geneva was that the CTBT is a non-proliferation Treaty, and that India's ratification is required for entry into force. If the UK persists in this interpretation, it may seek to defend a UK nuclear test prior to entry into force by claiming that it is not necessarily counter to the purpose of the Treaty.

A French official said that "by signing the CTBT, the five nuclear powers commit themselves politically, even before the entry into force of the treaty, not to resume testing".

United States Ambassador, Thomas Graham, Special Representative to the President for Arms Control and Disarmament, said: "On the legal question, the US Government does not yet have a formal position but

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expects to have one in the near future". Ambassador Graham, however, went on to note that "the moral force of signature will create a norm of international behaviour which we believe will ensure that the Chinese test in July 1996 will be the last nuclear test anywhere by anybody".

Two years of negotiation wrapped up

Despite concerns about EIF, support for the Treaty at the United Nations was strong, with 158 countries supporting the resolution and only three against: India, Bhutan, and Libya. Five countries abstained: Cuba, Lebanon, Mauritius, Syria, and Tanzania. There had been concerns that India or Iran might offer amendments or procedural objections. However, Australia, which took the lead in bringing the Treaty to the United Nations, had over 120 co-sponsors, enough to make any challenges fruitless. In the face of such support, India and Iran made speeches critical of the Treaty but allowed the vote to proceed smoothly.

The vote at the United Nations only took place after the Conference on Disarmament (CD) in Geneva failed to reach agreement on a text. The CD operates only by consensus. India, which all along wanted stronger language on disarmament in the Treaty, never intended to sign but had been willing to allow agreement on the text. However, when India's ratification was made a condition for the entry into force of the Treaty, New Delhi shifted to blocking agreement in Geneva, a position it would not change. It was in the face of this stalemate that Australia took the CTBT to New York and the United Nations General Assembly.

Ambassador Jaap Ramaker of The Netherlands, who presided over the last year of the CTBT negotiations, has indicated his belief that the CD did all that it could. Any further changes in the text to please one or more countries would displease an equal or greater number of other countries. In the case of entry into force, the United Kingdom, Russia and China all insisted that India had to ratify. The vote in New York indicates that the CD produced a Treaty that, despite its drawbacks, the vast majority of the world could support.

The prospects for the Treaty's entry into force appear dim, at least for the moment. In her speech to the UN, Indian Ambassador Arundhati Ghose declared "India will

never sign this unequal treaty, not now, not later. As long as this text contains this article, this treaty will never enter into force". In an attempt to address concerns about a delayed entry into force, provisions for a "political conference" to be held three to four years after the signing of the Treaty were included in the text. Such a conference "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 the Treaty. This provision was intentionally left somewhat vague, and several diplomats were reluctant to suggest what might take place at such a conference. According to one Western diplomat, most conferences of this type are merely designed to encourage additional signatories, but this one has broader powers, and the international community "could be surprised at what might be done". The diplomat added that it would be "very difficult to find a way out [of the EIF dilemma] but not impossible". *BASIC*

¹ The states required to sign and ratify the Treaty for it to enter into force are: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russia, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, USA, Viet Nam, Zaire.

**STEPS TOWARDS A NATO --
RUSSIA CHARTER**

by Tasos Kokkinides

On 6 September 1996, NATO offered Russia a new relationship and closer co-operation with the Alliance. US Secretary of State, Warren Christopher, said that the NATO-Russian relationship should be institutionalised in a charter. He said that "this charter should create standing arrangements for consultation and joint action between Russia and the Alliance. . . . The charter should give us a permanent mechanism for crisis management so that we can respond together

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immediately [to armed conflict or nuclear proliferation]". This is the first time a US statesman has publicly called for such an agreement between NATO and Russia.

A US official at NATO, interviewed by *BASIC Reports*, said: "The Russians have let it be known that although they are interested in talking to NATO, they ultimately want their relationship with the Alliance spelled out on paper. What they are after is a detailed and precise set of agreements". Christopher's proposal attempts to soften Russian objections to NATO enlargement. Moscow, however, has maintained silence over the US proposal. A Russian official in Brussels told *BASIC Reports* that "It is too early to judge. As things stand at the moment, there is nothing concrete in this proposal... it is unclear what the advantages to Russia will be from such a proposal".

In the next few months the details of the Christopher proposal will be negotiated in a series of meetings between US, NATO and Russian ministers and officials. The United States and Germany are keen to speed up the process. The US official said that Washington hopes the NATO-Russian charter will be signed during the NATO Summit initiated by President Clinton and scheduled for late spring or early summer 1997. At this Summit, which has been billed by President Clinton as "the most historic and forward-looking in the history of our NATO Alliance", NATO will invite new members from Central Europe to join the Alliance and will complete the adaptation of its military structure. Signing a charter with Moscow will be the crowning event.

German Foreign Minister, Klaus Kinkel, said NATO and Russian officials should take the first steps toward a formal link by the end of the year. The Russian official, however, was more cautious, saying that the pace of the discussions towards formal links cannot be dictated by one side. "It takes two to tango", he said. The US official expressed concern that Moscow may try to spoil the Summit by protracting negotiations on the charter. He said that "[t]he 16 will not allow Russia to postpone the Summit. At some point there will be de-coupling of the two processes if Moscow employs delay tactics".

US officials at NATO concede that it is too early to speculate on what issues and areas of cooperation will be

included in the charter. They point out that a framework on Russian-NATO relations already exists through the Partnership for Peace programme. Additional areas of cooperation are set out in the document entitled "Areas for pursuance of a broad, enhanced NATO/Russia dialogue and cooperation", agreed by the two sides in Noordwijk, The Netherlands, in May 1995. This document allows for ad-hoc "16+1" discussions on a number of issues, including the sharing of information on conflict prevention, conflict resolution and crisis management, proliferation of weapons of mass destruction and peace-keeping.

Former Russian Defence Minister, Pavel Grachev, put forward an ambitious set of proposals at the NATO meetings in Brussels and Berlin in December 1995 and June 1996. He proposed an exchange of liaison officers between Russia and NATO. NATO officers would be placed at the Russian ministry of Defence and in exchange their Russian counterparts would be attached, not just to SHAPE*, but also to all other major NATO commands. He also proposed cooperation on measures against terrorism and drug-trafficking, and on defence-related environmental damage. More controversially, Grachev proposed military cooperation in the development of armaments and equipment for peacekeeping operations and a regime of technical security to prevent a new arms race in the field of defence technology.

A NATO spokesman said that the Alliance "is open to suggestions on how to develop its relations with Russia. Although there is still work to be done to develop these Russian proposals further, the initial response by the NATO 16 has been positive".

NATO partner countries which have expressed interest in becoming members welcomed Christopher's proposal. One official from Central Europe explained to *BASIC Reports* that the "formalisation of NATO-Russian relations will diminish the negative perception in Russia about NATO enlargement". However, the same official warned that "NATO-Russian relations should be developed in parallel with enlargement. Russia cannot have a veto on enlargement". *BASIC*

*Supreme Headquarters of the Allied Powers in Europe

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NEW NPT REVIEW PROCESS GETS UNDER WAY

by Sharon Riggle and Martin Butcher

Members of the 25-nation Western Group of the Non-Proliferation Treaty (NPT) met in Geneva on 13 September 1996. This was the first meeting of the Group since the NPT Review and Extension Conference in May 1995. The meeting was held to conduct preliminary discussions on the first Preparatory Committee (PrepCom) Meeting of the new NPT review process, due to be held in April 1997. Delegates who attended the meeting were generally positive, and most described it as a constructive first exchange of views.

The new NPT review process is the result of three important decisions adopted at the Review and Extension Conference last year. First, the States Parties agreed to strengthen the review process, providing for three or four PrepComs of ten working days each in the three years preceding each Review Conference. Second, they agreed that the PrepComs will discuss substantive issues, and not just organisational questions as they have in the past. To facilitate this, a set of Principles and Objectives for Nuclear Non-Proliferation and Disarmament was agreed, which outlines the issues for future reviews, and establishes specific goals for the States Parties to achieve. Third, the NPT, which previously had a life of 25 years, was extended indefinitely. (For a summary of the NPT Review and Extension Conference 1995, see *BASIC Reports* No.45).

Delegates and observers feared that the disputes during the conclusion of the Comprehensive Test Ban Treaty (CTBT) negotiations this summer would make this first NPT meeting a difficult one. However, the overwhelming support the CTBT received in the United Nations General Assembly (UNGA) created a more positive mood. Particularly important was that no NPT member state voted against the CTBT. The UK, as Chair of the Western Group and an NPT depositary state, convened the meeting. Both procedural and substantive issues were considered. This is a positive development as there had been fears that the US and the UK would attempt to steer the talks in a strictly procedural direction. The meeting was a very preliminary

one, and in interviews for *BASIC Reports* delegates confirmed that their governments are at the earliest stage in PrepCom deliberations.

The current proposal is that the PrepCom should be held from 7 - 17 April 1997 in New York. It is likely that the Chair of this first meeting would be from the Western Group, followed in successive PrepComs by a nominee from the Eastern Group and then the Non-Aligned Movement (NAM). Officials indicated that if this arrangement is maintained, then the Western Group would be able to support a NAM candidate for President of the full Review Conference in 2000 (as in 1995). There is some debate as to whether future PrepComs should also be in New York or whether, as at least one nation has proposed, they should rotate to Geneva and Vienna as well. These arrangements will be confirmed in an enabling resolution proposed by Sri Lanka (President of the last Review Conference) in the United Nations First Committee Meeting in October, and will likely be approved by the UNGA that follows the First Committee.

On substantive issues, despite the disparate nature of the Western Group (containing countries from Europe, North and South America and Asia), there was broad agreement, not only that the issues should be discussed, but that disarmament and non-proliferation should be given equal weight. One delegate said the structure would be a review of the Treaty text, in light of the Principles and Objectives agreed in May 1995, highlighting the general opinion that the Treaty and the Principles are intrinsically linked and cannot be separated. The Western Group examined the Principles and Objectives point by point during their meeting.

Delegates generally felt that the PrepCom will go well, with much progress to point to since the Review and Extension Conference. The first item in the list of Principles and Objectives, the CTBT, which was described as a "watershed" for the disarmament process, was successfully passed in the UNGA. Nuclear-weapon-free zones have enjoyed success in recent months, with the creation of African and South-East Asian zones, and the accession of France, the US and the UK to the South Pacific zone. Universal application of the NPT will see progress before April with the expected accession of Angola, Djibouti,

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Oman, the United Arab Emirates and, possibly, Brazil to the Treaty. US ratification of START II will be on the list of achievements, and the recent expansion of the Conference on Disarmament membership will also contribute to a positive atmosphere at the PrepCom.

The next Western Group meeting is scheduled for either 14 or 15 October 1996, in New York, ahead of the caucus of States Parties to the NPT on 18 October. These meetings will be procedural and will deal with the First Committee resolution. The next coordinated NPT discussions will take place early in 1997, when it is expected that the Western Group and the NAM will begin serious planning for the PrepCom. The Eastern Group has set no meetings at this point. *BASIC*

Sharon Riggle is Programme Director and Martin Butcher is Director of the Centre for European Security and Disarmament in Brussels. This article was written from notes of meetings with delegates to the Western Group following their meeting of 13 September 1996.

SELECTED BASIC PUBLICATIONS

NEW RELEASES

New Text For a Comprehensive Test Ban Treaty (BASIC Paper #18, 30 May 1996). This paper analyses the draft CTBT text prepared by chair of the CTBT negotiations, Ambassador Jaap Ramaker.

Future of the CFE Treaty (BASIC Paper #17, 6 May 1996). Written by Jonathan Dean, Senior Advisor to the Union of Concerned Scientists, this paper analyzes different options for the Review Conference on the CFE Treaty to revise the treaty without utilizing the alliance-to-alliance format used at the end of the Cold War.

Nuclear Futures (96.1) This report counters the perception that the end of the Cold War has brought about the beginning of nuclear disarmament. It analyzes the declared nuclear powers' new nuclear policies and strategies in response to the changing global security environment. Co-written by Paul Rogers and Simon Whitby of Bradford University and BASIC Senior Analyst Stephen Young.

RESEARCH REPORTS

Current Projects on Light Weapons (Project on Light Weapons Working Paper #1, February 1996). This guide contains descriptions of projects and contact information for more than 40 organizations and individuals working on light weapons issues.

Light Weapons Manufacture in the Public and Private Sectors: A View From Pakistan (Project on Light Weapons Working Paper #2, February 1996). This paper studies the management of light weapons manufacture in both the public and private sectors in Pakistan, and offers policy recommendations.

Study on NATO Enlargement: Destabilizing Europe (Issues in European Security, #3; 95.2). This report analyzes NATO's enlargement study, concluding that it addresses neither the security risks nor the costs involved in NATO expansion. A joint publication of BASIC and the Centre for European Security and Disarmament.

BASIC PAPERS *Occasional Papers on International Security Issues*

NATO Enlargement and Ukraine (BASIC Paper #16, 11 April 1996). This paper analyzes the risks involved in expanding NATO by either including or excluding Ukraine and its effects on both Ukraine's foreign policy and regional security in Central Eastern Europe.

Implementing Dayton: Arms Control and Intelligence in Former Yugoslavia (BASIC Paper #15, 11 March 1996). This paper analyzes both the provisions in the Dayton Accords meant to reduce military tensions and US and NATO intelligence operations in the former Yugoslavia.

Review of the Dayton Accords (BASIC Paper No. 14, 11 December 1995). This paper analyzes the "fine print" of the Dayton Accords and warns that unless the civilian components of the agreement are fully implemented and greater weapons reductions are carried out, the NATO Implementation Force may simply provide a pause in the fighting.

ALSO AVAILABLE

Light Weapons and International Security (New Delhi: British American Security Information Council and Institute for Defence Studies and Analyses, 1995). This book contains the papers and research notes from the October 1995 Project on Light Weapons workshop in New Delhi, India. The conference was co-sponsored by BASIC and the American and Indian affiliates of the Pugwash Conferences on Science and World Affairs.

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